

1 STATE OF MINNESOTA DISTRICT COURT  
2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT  
3 - - - - -  
4 The State of Minnesota,  
5 by Hubert H. Humphrey, III,  
6 its attorney general,  
7 and  
8 Blue Cross and Blue Shield  
9 of Minnesota,  
10 Plaintiffs,  
11 vs. File No. C1-94-8565  
12 Philip Morris Incorporated, R.J.  
13 Reynolds Tobacco Company, Brown  
14 & Williamson Tobacco Corporation,  
15 B.A.T. Industries P.L.C., Lorillard  
16 Tobacco Company, The American  
17 Tobacco Company, Liggett Group, Inc.,  
18 The Council for Tobacco Research-U.S.A.,  
19 Inc., and The Tobacco Institute, Inc.,  
20 Defendants.  
21 - - - - -  
22 TRANSCRIPT OF PROCEEDINGS  
23 VOLUME 36, PAGES 7086 - 7291  
24 MARCH 10, 1998  
25

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CROSS-EXAMINATION - CHERYL L. PERRY

1 P R O C E E D I N G S.  
2 THE CLERK: All rise, Ramsey County  
3 District Court is again in session, the Honorable  
4 Kenneth J. Fitzpatrick now presiding.  
5 (Jury enters the courtroom.)  
6 THE CLERK: Please be seated.  
7 THE COURT: Good morning.  
8 (Collective "Good morning.")  
9 THE COURT: Counsel.  
10 MR. WEBER: Thank you, Your Honor.  
11 Am I on? This says I'm on. How about now?  
12 That sounds better.  
13 Your Honor, I hope this (referring to easel)  
14 isn't blocking communication between us. I think  
15 we're okay. But if it gets in the way, if you'd let  
16 me know, I'd appreciate it.  
17 THE COURT: Fine.  
18 MR. WEBER: Good morning, ladies and  
19 gentlemen.  
20 (Collective "Good morning.")  
21 CHERYL L. PERRY  
22 called as a witness, being previously  
23 sworn, was examined and testified as  
24 follows:  
25

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1 BY MR. WEBER:  
2 Q. Good morning, professor.  
3 A. Good morning, Mr. Weber.

4 Q. Professor, my name is Bob Weber. I'm going to  
5 ask you some questions about some of the issues you  
6 discussed over the past few days, but before I begin,  
7 I just want to say if there's any question that I ask  
8 that you don't understand or that doesn't make sense,  
9 please just let me know and I'll try to rephrase it.  
10 All right?

11 A. Okay.

12 Q. Now you completed your Ph.D. in 1980 and then  
13 came here to the University of Minnesota?

14 A. Yes. I completed my Ph.D. in July of 1980 and  
15 finished up some research work I was doing in the  
16 department of communications, and started here in  
17 November of 1980.

18 Q. And you --

19 A. So that was my first winter.

20 Q. And you have not been a full-time employee of a  
21 private business; have you, ma'am?

22 A. I have been a full-time employee of a private  
23 business while I was in school, so during my summer  
24 times I -- I worked in businesses.

25 Q. But since you've got your degree, you have not

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1 been a full-time employee of a private business;  
2 correct?

3 A. Since I've gotten my degree, I've been a  
4 full-time employee of the University of Minnesota,  
5 which increasingly is like a private business, but it  
6 is a public institution.

7 Q. And you've not been responsible for developing  
8 or effectuating any marketing and advertising plans  
9 for private businesses that sell consumer products;  
10 have you, professor?

11 A. Well, what I've been responsible for is, as I  
12 explained on Friday, the design, the development, the  
13 implementation and evaluation of large-scale  
14 community-wide programs for youth and adolescents.  
15 In fact, the kind of work I do is often referred to  
16 as social marketing because we are marketing a kind  
17 of social behavior as opposed to a commercial  
18 behavior or commercial product, so the kinds of  
19 activities that go on in the private sector around  
20 marketing and are quite similar to the kinds of  
21 things that I have been doing for the last 20 or so  
22 years.

23 Q. Is the answer to my question, then, no,  
24 professor?

25 MS. WALBURN: Objection, asked and

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1 answered.

2 THE COURT: You may answer it.

3 A. My -- my experience over the last 20 years has  
4 been to develop, implement, and evaluate large-scale  
5 community-wide programs for children that involves  
6 some of the same principles as in marketing.

7 Q. Is the answer to my question no, that you have  
8 not been responsible for developing and effectuating

9 marketing or advertising plans for private businesses  
10 that sell consumer products?

11 A. I've been responsible for developing,  
12 implementing, and evaluating programs for children  
13 and adolescent behavior in our community.

14 MR. WEBER: Your Honor, may I ask the court  
15 to instruct the witness to answer the question?

16 MS. WALBURN: I object to that request,  
17 Your Honor. The question has been asked and answered  
18 at this point.

19 THE COURT: You can ask it again if you  
20 wish.

21 MR. WEBER: Okay.

22 Q. Let me ask it again: Is it correct, Professor  
23 Perry, that you have not been responsible for the  
24 development or effectuation of advertising or  
25 marketing plans for private businesses that sell

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1 consumer products?

2 A. I've been responsible for programs in the public  
3 domain and have not done this for a private business.

4 Q. Now is it also true that the only area of  
5 advertising and marketing that you have studied  
6 extensively with respect to private business is  
7 cigarette advertising?

8 A. Yes, my particular area of expertise. Because  
9 smoking is the number one cause of preventable  
10 disease and death and because I'm interested in  
11 public health, the main area I've been interested in  
12 is cigarette advertising and promotion and its  
13 effects on adolescent behavior.

14 Q. And you have done no extensive study of any  
15 other private advertising issues; correct?

16 A. I have done some -- some investigations similar  
17 to where I was in cigarette advertising, perhaps 15  
18 years ago, in the area of alcohol, but that's kind of  
19 where -- alcohol use in adolescence. But I would say  
20 my primary area of -- of research in the area of  
21 advertising and promotion has been specifically  
22 around its effects on youth smoking behavior.

23 Q. Now your CV lists a number of academic  
24 publications, an extensive list, but is it true that  
25 you have never published in a peer-reviewed journal

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1 in the fields of advertising or marketing?

2 A. The journals that I publish in are the journals  
3 that relate to behavioral health, so I would publish  
4 in Behavioral Medicine, the Journal of the American  
5 Medical Association, the American Journal of Public  
6 Health, and other journals that relate to smoking  
7 behavior among adolescents. And that's where the  
8 bulk of the research is on smoking behavior among  
9 adolescents. It's not in the advertising journals,  
10 it's in the journals that are -- are the ones for --  
11 in my area.

12 Q. Is it true, professor, that you have never  
13 published in a peer-reviewed journal in the fields of

14 advertising or marketing?  
15 A. The journals that I publish in often publish  
16 articles on advertising and its effects on youth --  
17 on smoking behavior, it may be adult or youth, so  
18 that it clearly is the kind of journals that are  
19 interested in this relationship between cigarette  
20 smoking and advertising or other aspects of public  
21 health and advertising.  
22 Q. Is the answer to my question no, you have never  
23 published in a peer-reviewed journal in the field of  
24 marketing or advertising?  
25 MS. WALBURN: Objection, asked and  
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1 answered.  
2 THE COURT: You may answer that.  
3 A. I would consider the kinds of journals that I  
4 published in having an interest in and publishing  
5 research that would be considered advertising  
6 research.  
7 Q. But the question is: Have you published in  
8 peer-reviewed journals that are devoted to the fields  
9 of advertising or marketing?  
10 MS. WALBURN: Objection, asked and  
11 answered.  
12 THE COURT: You may answer that.  
13 A. The journals that I publish in, such as the  
14 American Journal of Public Health, and certainly  
15 you've heard quite bit about the Journal of the  
16 American Medical Association, spend a great deal of  
17 their time on the issue of advertising and promotion  
18 and its effects on people's behavior. So in that  
19 sense, those are highly regarded peer-reviewed  
20 journals that deal with this subject of advertising  
21 and promotion. So I would say in that sense, yes, I  
22 have published in those journals.  
23 Q. Is the American Journal of Public Health and the  
24 Journal of the American Medical Association, are  
25 either of those peer-reviewed journals that are  
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1 devoted exclusively to the analysis of scholarly  
2 study in the fields of advertising or marketing?  
3 A. Both of those journals are devoted to the  
4 improvement of the health of people, not just in the  
5 U.S., but globally.  
6 Q. Is the answer to my question then no, they are  
7 not devoted exclusively to the scholarly study of  
8 issues in marketing and advertising?  
9 A. To the extent that advertising and promotion  
10 affect the health of -- of the American public, they  
11 are devoted to those issues.  
12 Q. My question, though, professor, was whether the  
13 American Journal of Public Health or the Journal of  
14 the American Medical Association were peer-reviewed  
15 journals devoted exclusively to the scholarly study  
16 of issues in marketing and advertising. Can you  
17 answer that?  
18 A. I can answer that. The American Journal of

19 Public Health and the Journal of the American Medical  
20 Association are, in part, devoted to -- to issues of  
21 advertising and promotion. They are not exclusively  
22 involved with that because there are other issues  
23 that concern the health of Americans.

24 Q. Now there are journals that are devoted to the  
25 scholarly study of advertising and marketing; are

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1 there not?

2 A. I would imagine there are, such as the Journal  
3 of Marketing that I cited during the -- during  
4 yesterday's testimony.

5 Q. Right. And indeed, journals such as the Journal  
6 of Advertising, the Journal of Marketing, the  
7 International Journal of Advertising, journals like  
8 that, of that type, are respected journals in the  
9 area that you cited in the Surgeon General's report;  
10 correct?

11 A. They're respected journals having to do with  
12 advertising, but they deal with the broad area of  
13 advertising and in general spend a very little bit of  
14 their time devoted to the relationship between  
15 cigarette advertising and promotion and adolescent  
16 behavior. So the number of articles devoted to that  
17 is relatively small compared to what you would find  
18 in the public health or medical literature.

19 Q. I'm --

20 My question may not have been clear. What --  
21 what I asked is you have cited in the Surgeon  
22 General's report research from the Journal of  
23 Advertising, the Journal of Marketing, International  
24 Journal of Advertising; have you not?

25 A. Yes. We included those particularly in the

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1 chapter that we devoted to advertising and  
2 particularly on the history of advertising to the  
3 young and how the tobacco industry was involved in  
4 that over the course of the century, so we used  
5 citations from Advertising Age, from the Journal of  
6 Advertising, to -- to make those points.

7 Q. And indeed, you also cited Advertising Age, as  
8 you just said; correct?

9 A. Yes, I did cite Advertising Age as -- as a  
10 source of information.

11 Q. And Advertising Age is a reliable source of data  
12 and statistics with respect to advertising; is it  
13 not?

14 A. I'm not sure if it's a reliable source of  
15 information. I believe it is. We used that source  
16 in the Surgeon General's report, and I know those  
17 sources were ones that were peer reviewed, as I -- as  
18 I mentioned, by 70 or 80 or a hundred people. So --

19 Q. But at least with respect to statistical  
20 analyses, you -- the data and statistics in  
21 Advertising Age were good enough to be included in  
22 the 1994 Surgeon General's report when you were  
23 looking for statistics on advertising; correct?

24 A. Well each article that you look at, you look as  
25 to whether it meets certain peer-review criteria, and  
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1 some of what we quoted in chapter five of the Surgeon  
2 General's report were things like advertising  
3 executives' comments on particular campaigns, so they  
4 were just quotes of comments that might say how Leo  
5 Burnett affected Philip Morris by starting a Marlboro  
6 campaign, and we cited Advertising Age.

7 Now that I really wouldn't consider data and  
8 data analysis, those were quotes from -- from people  
9 that might come through Advertising Age. So I'm a  
10 bit equivocal on how good or how -- you know, how  
11 good that particular -- the data is based on what we  
12 used in the Surgeon General's report.

13 Q. Now one of the responsibilities you had as the  
14 senior scientific editor of the 1994 Surgeon  
15 General's report was to assure the scientific  
16 integrity of the data and sources that were cited;  
17 correct?

18 A. Yes. I was to ensure that it met peer review.  
19 So we went through a rather laborious process; that  
20 is, for each citation we collected from the authors  
21 the front page of that citation so we knew it was a  
22 real citation. Now in areas where it went out for  
23 peer review that perhaps weren't my area of  
24 expertise, for example, the effects of cigarette  
25 smoking on lung function among young people, that's

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1 not my area of interest, that went out for peer  
2 review. We got, you know, very good responses to Dr.  
3 Samet's writings on that; you know, there were only  
4 minor things that needed to be checked out. So that  
5 meant that for -- for those citations, I didn't read  
6 each and every article that went into that. I really  
7 relied on my peers and the peer-review process to --  
8 to ascertain that what was said was -- was the truth.

9 So in that sense I certainly didn't read each  
10 and every article. I relied on the -- the fact that  
11 this is, as I said, a consensus document.

12 Q. Do you remember having stated that you were  
13 responsible for assuring the scientific integrity of  
14 the data included in the report and the validity of  
15 the conclusions arrived at?

16 MS. WALBURN: Objection to the form of the  
17 question. If we can know what counsel is reading  
18 from.

19 MR. WEBER: Well I think I'm allowed to ask  
20 before -- under the rule before I show her the  
21 document, Your Honor.

22 THE COURT: Well if --

23 MR. WEBER: I just --

24 THE COURT: You can't read from the  
25 document and then ask the question, that's not

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1 appropriate. If you have a document, I think she's  
2 entitled to it, or if you're referring to her  
3 testimony, she's entitled to have that in front of  
4 her.

5 BY MR. WEBER:

6 Q. Do you remember giving an affidavit in a case in  
7 New York with respect to signs at Shea Stadium?

8 A. Yes, I do.

9 Q. Do you remember stating in that affidavit that  
10 you were responsible for assuring scientific  
11 integrity of the data and the conclusions arrived at?

12 MS. WALBURN: Can we have the exhibit  
13 number for the affidavit, please?

14 MR. WEBER: That's ASP000005.

15 Q. And if you'd like --

16 Do you remember signing -- making that statement  
17 in the affidavit? That's all I'm asking, professor.

18 A. No, I don't remember.

19 Q. Okay. Would you look at tab 75 in the binder,  
20 see if that refreshes your recollection. And  
21 that's -- it would be paragraph two on page two.

22 A. This tab 75 says "Camel Performance."

23 Q. Okay. Well then I've got the wrong tab. Let  
24 me --

25 MR. WEBER: May I approach, Your Honor?

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1 Q. Seventy-six? Would you try 76 for me?

2 A. That looks more like it.

3 Q. Okay, thank you.

4 Could you turn to paragraph two, page two, and  
5 could you read the second sentence of that paragraph.  
6 Why don't you read the first two sentences for me, if  
7 you would, please, professor.

8 A. I'd like just a second --

9 Q. Okay.

10 A. -- to take a look --

11 Q. Certainly.

12 A. -- at what I wrote.

13 Yes. I said I was responsible for overseeing  
14 the development of the report and assuring the  
15 scientific integrity of the data included in the  
16 report and the validity of the conclusions arrived  
17 at. I also said the preparation took two years and  
18 involved a hundred scholars throughout the world in  
19 the writing and scientific review process, and that  
20 this was the first Surgeon General's report in 30  
21 years to focus on young people. And I think, you  
22 know, in --

23 What I meant by that statement was that by being  
24 scientific editor, that I assured -- I assured that  
25 the peer-review process had worked, that the peer-

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1 review process was in place and that the conclusions  
2 arrived at had validity. It did not mean that every  
3 single sentence in the Surgeon General's report was  
4 something that I personally could back up.

5 Q. Well what you -- what you said was the buck  
6 stopped with you. You were responsible for assuring  
7 the scientific integrity of the data and the validity  
8 of the conclusions; correct?

9 A. No, the buck did not stop with me; that's why  
10 this is a consensus document. I was responsible for  
11 putting this report together, and -- and, in fact,  
12 given that there were topics like the health  
13 consequences or like addiction that really are not my  
14 areas of expertise, I needed to rely on the  
15 peer-review process. Not only that, but, as I  
16 explained on Friday, I had to go back and forth  
17 between lots of -- lots of scientists, actually  
18 flying to them and flying back, to make sure that  
19 what they took -- to rectify if there were any -- any  
20 disputes.

21 But after me, after me and my analysis of this,  
22 it went through 36 people, the senior scientists who  
23 reviewed it, and then after that it went through  
24 government layers, it went through the Office on  
25 Smoking and Health, the entire office, it went

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1 through CDC, it went through all of NIH, that means  
2 the National Cancer Institute, the National Institute  
3 on Drug Abuse, then it went to Health and Human  
4 Services, and finally really the buck stopped at the  
5 top level, it's the -- that it is a report of the  
6 Surgeon General.

7 So I was a facilitator of this process, and it  
8 was a big process, but I was a facilitator of a  
9 consensus document.

10 Q. But just to summarize -- well strike that.

11 But what you did say in this affidavit was that  
12 you were responsible for assuring the scientific  
13 integrity of the data included in the report and the  
14 validity of the conclusions. Did you not state that  
15 under oath in this affidavit?

16 A. I stated that within what I believed to be my  
17 duties, and my duties were to work with peer review  
18 and to ensure that that process took place. This is  
19 how science works.

20 If a -- if a paper gets into JAMA, the editor of  
21 JAMA is -- just needs to make sure that this  
22 scientific process works, that peer review has taken  
23 place and -- and the peers agree that this is of  
24 scientific merit.

25 Q. So is the answer to my question yes, that is the

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1 language in your affidavit?

2 MS. WALBURN: Objection, asked and  
3 answered.

4 THE COURT: You may answer that.

5 A. My answer is -- is that I was reflecting what I  
6 had done and how I interpreted that, that what I  
7 meant when I said "assuring the scientific integrity  
8 of the data" was that I was a facilitator for making  
9 sure the peer-review process worked and that this was



10 the best consensus document we could come up with in  
11 1994.

12 Q. So the answer is yes, that language that I said  
13 in my last question is the language you used in your  
14 affidavit?

15 A. My answer is is that the language I used  
16 reflected to me the process that I used as senior  
17 scientific editor, that I was a facilitator of the  
18 peer-review process.

19 Q. Was that the language that I said in two  
20 questions ago, that was the language that was in your  
21 affidavit; correct?

22 A. The language can't be taken out of context. The  
23 context is the Surgeon General's report. The Surgeon  
24 General's report has a particular process, it's  
25 not -- I didn't write a book by myself with every

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1 piece of data with me attributing that data to my  
2 statement. This -- this statement reflects my role  
3 in the Surgeon General's report, and I don't think it  
4 should be taken out of that context.

5 Q. Well, in that whole paragraph two you don't use  
6 the word "facilitator" anywhere; do you?

7 A. I didn't feel I needed to. Surgeon General's  
8 reports are always written in this way. I wasn't in  
9 a unique role. And Dr. Samet was senior scientific  
10 editor, he went through the same two-year process.  
11 And in fact there had been no Surgeon General's  
12 report since 1994, and here it is already 1998,  
13 because the review process for the last three Surgeon  
14 General's reports that are in the works are still  
15 going through this rigorous peer-review and review  
16 process.

17 Q. Did you use the word facilitator in paragraph  
18 two, professor?

19 A. I didn't feel the need to use the word  
20 facilitator in paragraph two because that is inherent  
21 to the role of senior scientific editor of the  
22 Surgeon General's report.

23 Q. Does that mean you did not use the word  
24 facilitator in paragraph two?

25 A. I did not see a need to use the word facilitator

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1 in the -- in this affidavit.

2 Q. And the word isn't in there; correct?

3 A. I did not see the need to use the word  
4 facilitator.

5 Q. And what is in there is that you were  
6 responsible for assuring the scientific integrity of  
7 the data in the report; correct?

8 A. What was in there --

9 Q. That's -- that's a direct quote; isn't it?  
10 I'm sorry. Let me strike the question and ask  
11 again. I'm sorry to interrupt.

12 That's a direct quote from that affidavit, that  
13 you were responsible for assuring the scientific  
14 integrity of the data; correct?

15 MS. WALBURN: Objection, asked and  
16 answered. I believe this entire paragraph two has  
17 already been read into the record.

18 THE COURT: Okay. I think at this point  
19 it's been asked and answered.

20 MR. WEBER: Okay.

21 BY MR. WEBER:

22 Q. Now, your current faculty position is in the  
23 division of epidemiology?

24 A. Yes, it is.

25 Q. And you're trained in analyzing population

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1 studies with multiple factors and variables. You've  
2 done that in your professional work?

3 A. My training is in a variety of -- of areas, as  
4 is the field of public health. Public health is  
5 increasingly multi-disciplinary because the problems  
6 of public health require scientists who can select  
7 data, who can analyze data, who can develop programs,  
8 who can see if those programs work, who can even be  
9 involved in legal processes.

10 Q. So you are trained in analyzing population  
11 studies with multiple factors and variables; isn't  
12 that true?

13 A. Part of my training is in -- in analysis of data  
14 of large populations. My primary interest is in  
15 looking at the effects of educational programs or  
16 at -- or what we call intervention programs. And  
17 within that, my primary interest is in the design and  
18 development of those educational and intervention  
19 programs.

20 Q. Now as one employed at the division of  
21 epidemiology, you understand the difference between  
22 the words "risk factor" and "cause;" do you not,  
23 professor?

24 A. Well it's in -- it's in a --  
25 It's always debated.

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1 Q. But at least the epidemiologic textbooks used at  
2 the University of Minnesota to train people  
3 differentiate between risk factor and cause; do they  
4 not?

5 A. Well risk factors are needed to come up with a  
6 causal argument. You need -- it has to be --  
7 Something has to be a risk factor for something  
8 else in order for it to be causal. It's not enough  
9 to be just a risk factor, but needs to be -- it's  
10 sufficient but not necessary.

11 Q. So --

12 And I think that's the -- the distinction in the  
13 definition I was -- was asking about. A risk factor  
14 may or may not be a cause, it is an association with  
15 something else; correct?

16 A. It's not necessarily an association, which  
17 generally refers to something the same as in time.  
18 Cause has a temporal relationship to it. So, for  
19 example, if you have a cigarette advertising and

20 promotion campaign, and following it youth smoking  
21 increases, that's a temporal relationship. So that  
22 cigarette advertising and promotion is a risk factor  
23 for that, but it may also cause that because there's  
24 a temporal relationship involved.

25 Q. But the use of the word "risk factor" does not  
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1 in and of itself mean cause; correct? Many things  
2 can be risk factors that science doesn't know are  
3 causal yet; correct?

4 A. Yes. Many things can be risk factors, and you  
5 need a rather large look at the available literature  
6 to then come to a causal argument.

7 Q. Now in the 1994 Surgeon General's report,  
8 advertising and promotion of cigarettes was  
9 classified as a risk factor for smoking initiation;  
10 was it not?

11 A. Cigarette advertising and promotion was said to  
12 affect the perceptions that adolescents had about  
13 smoking, the image, and the function of smoking,  
14 which in turn would affect their smoking behavior.

15 Q. Was the answer -- is the -- let --

16 Let me ask it again. In the 1994 Surgeon  
17 General's report, the advertising of cigarettes was  
18 classified as a risk factor for smoking initiation;  
19 was it not, professor?

20 A. Well it wasn't --

21 It was not only -- it was not only categorized  
22 as a risk factor, it was also seen as a direct  
23 influence on -- on teen-age smoking behavior in this  
24 way: Cigarette advertising and promotions would  
25 affect image, function and pervasiveness, perceptions

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1 of pervasiveness, which in turn affect youth smoking  
2 behavior.

3 Q. Was it classified as a risk factor in the 1994  
4 report or not, professor?

5 MS. WALBURN: Objection, asked and  
6 answered.

7 THE COURT: I think it's been asked and  
8 answered now.

9 Q. Could you turn to page 123 of the 1994 Surgeon  
10 General's report, professor. Do you have it there?

11 A. I do.

12 Q. And would you agree with me that Table 1 on page  
13 123 is labeled "Psychosocial risk factors in the  
14 initiation of tobacco use among adolescents?"

15 A. Yes. This -- this table, as I explained, was a  
16 summary of the research I had done in this chapter.  
17 My part of the chapter was on smoking, and someone  
18 else actually did the part on smokeless tobacco. So  
19 we listed what we called were -- what we called were  
20 risk factors and put little X's by those that were  
21 risk factors for smoking.

22 Q. So that's a list of risk factors; correct?

23 A. It is a list of risk factors. Not all of them  
24 are risk factors. And of course -- because that's

25 the difference in the little X's. And not all of  
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1 them are strong risk factors. So that there is a  
2 difference statistically between what is a weak risk  
3 factor and a -- and a stronger risk factor.

4 For example, as I mentioned, we took advertising  
5 completely out of this chapter and devoted an entire  
6 chapter to it because we felt it was so important and  
7 because advertising affects so many of these risk  
8 factors, which in turn affects smoking. Like we saw  
9 yesterday that advertising affects peer use, it  
10 affects their normative expectations, how many of  
11 their peers they think are smoking, it affects their  
12 meanings.

13 Q. Well you didn't take advertising totally out of  
14 that chapter because you listed it as a risk factor;  
15 correct? Right there in Table 1 on page 123 under  
16 "Environmental Factors," the second one listed;  
17 correct? So it is in that chapter and it's listed as  
18 a risk factor. Can we agree on that?

19 A. Well we may have used the word "advertising"  
20 even a couple places in this -- in this chapter, but  
21 we also did the -- really did our discussion of  
22 advertising in chapter five. So this --

23 So yes, we listed it because we felt it was an  
24 important factor in influencing young people to  
25 smoke.

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1 Q. Now isn't it true that in the entire 300 or so  
2 pages of the 1994 Surgeon General's report, it was  
3 never once stated that advertising was a cause of  
4 smoking initiation?

5 A. No, I wouldn't agree with that, and I'll tell  
6 you why. If you look at the fifth major conclusion  
7 to the Surgeon General's report, or if -- even if we  
8 looked at the end of chapter five, if you'd like to  
9 take a look at page 195, and yesterday I -- I read  
10 these conclusions for the jury, and the last one in  
11 particular, we as a group felt at this point that  
12 this meant causal. "Cigarette advertising appeared  
13 to affect young people's perceptions of the  
14 pervasiveness, image and function of smoking. Since  
15 misperception in these areas constitute psychosocial  
16 risk factors for the initiation of smoking, cigarette  
17 advertising appears to increase young people's risk  
18 of smoking."

19 What we meant by that was that cigarette  
20 advertising and promotional activities affect  
21 pervasiveness, image and function -- that's what we  
22 had gotten from the literature at that point -- and  
23 they in turn affected youth smoking. Now, we did not  
24 use the word "causal." We did not use the word  
25 "causal." But, as we read yesterday on page 188, we

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1 said, "This lack of definitive literature does not  
2 imply that a causal relationship does not exist."  
3 Rather, we needed more research and we wanted to take  
4 a look at industry documents. So we felt as a group  
5 that in fact it was causal. We were seeing that  
6 cigarette advertising and promotion affect these risk  
7 factors, which in turn affect youth smoking. We  
8 weren't ready to make that causal statement, but we  
9 didn't rule it out either.

10 And since the Surgeon General's report we have  
11 had a large quantity of new research, and through  
12 this case we've been able to look at hundreds of  
13 documents. I have.

14 Q. But in terms of the 1994 Surgeon General's  
15 report, as you just said, we weren't ready to make  
16 the causal judgment; right?

17 A. No, not the causal judgment. I think you're  
18 misstating what I said. We felt that there was a  
19 causal relationship that cigarette advertising and  
20 promotion affects image, function and pervasiveness,  
21 which in turn affects youth smoking. That is causal,  
22 that is a causal link. One leading to the other  
23 leading to the other, that is a causal link. But we  
24 didn't want to say this causes, the actual word  
25 "causes," because we felt we needed more data. And

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1 we have that data now.

2 Q. Now did you not just say in that last answer,  
3 quote, We weren't ready to make that causal  
4 statement, but we didn't rule it out either, unquote?

5 A. Did I say that?

6 Q. Do you remember saying that a minute ago?

7 A. I believe I -- if you -- if you wrote it down --  
8 we --

9 Q. I'm not writing it. Just so you understand,  
10 professor, there's a --

11 A. Oh, there's a monitor.

12 Q. -- there's a realtime printout.

13 A. Oh, I see.

14 Q. I'm trying to write some things and read others.  
15 So --

16 A. Yeah. I don't get to do that.

17 Q. But you do remember saying that just a minute  
18 ago; don't you?

19 A. Well what I -- what I remember thinking was that  
20 as a group we felt there was a causal link, so as a  
21 group we felt that, but we weren't ready to publicly  
22 use that word "causal," which is a very powerful  
23 word, and -- because we wanted more data. And we  
24 wanted -- and we got that data through lots of  
25 research studies which have only emerged in the

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1 1990s, and through the documents which we reviewed  
2 yesterday and throughout this case.

3 Q. "But as of the time of this report, the people  
4 who wrote this report classified advertising as a  
5 risk factor, and we're not ready to make the causal

6 statement;" correct?  
7 A. No. The people who wrote this report felt there  
8 was a causal linkage. I talked with them. These are  
9 my colleagues. We were not ready to publicly say  
10 there was a causal link because this is a  
11 conservative document. It represents the science of  
12 the fields and it's not an advocacy piece. We were  
13 very careful. We also said we did not rule out  
14 causality. We said -- we didn't say, well, there's  
15 no causal relationship. We didn't -- we didn't say  
16 that. We said cigarette advertising and promotion  
17 affects these factors, which in turn affect youth  
18 behavior, which means causal.

19 Q. Now on Friday you said that this document  
20 represented the best science at the time; correct?  
21 Remember that?

22 A. Yes, I do. And I'd like to clarify that the  
23 time, quote, unquote, time, was not really 1994, the  
24 time is really about 1992, because that's when we  
25 wrote the pieces of the report. And remember, I went

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1 through my long talk about how long it took to do  
2 this. So there are only a few references in the  
3 Surgeon General's report even from 1993. So we have  
4 five or six years more of -- of data.

5 And a consensus document means that the  
6 scientists thought it was the best science of -- of  
7 that time.

8 Q. So based on the best science that was available  
9 then, the authors of the report were not ready to  
10 publicly state that advertising was a cause of  
11 smoking initiation; correct? Is that a fair summary?

12 A. No.

13 Q. Did you --

14 A. The --

15 Q. Well let me ask --

16 THE COURT: Counsel, --

17 MR. WEBER: I'm sorry.

18 THE COURT: -- don't interrupt the witness.

19 MR. WEBER: All right.

20 A. Can you repeat that question again?

21 Q. Well let me withdraw it and make -- see if I can  
22 make it clearer.

23 (Discussion off the record.)

24 BY MR. WEBER:

25 Q. At least as of the time of the '94 report, the

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1 scientists who worked on it were not ready to  
2 publicly state in this document that advertising was  
3 a cause of smoking initiation. Isn't that what you  
4 just said?

5 A. The document states that advertising and  
6 promotion affects pervasiveness, image and function,  
7 which in turn affect youth smoking. That is a causal  
8 link. We did not use the actual word "causal"  
9 because we wanted more data. The scientists agreed  
10 at that time that it was causal but did not want that

11 included in this report, nor did we want to rule it  
12 out. We made that very explicit, because we wanted  
13 more data. And, of course, we have that data now.  
14 Q. So you were not ready to publicly state it was  
15 causal in this report; correct?

16 MS. WALBURN: Objection, asked and  
17 answered.

18 THE COURT: I think we've kind of covered  
19 it, counsel. Let's move on.

20 BY MR. WEBER:

21 Q. Now indeed, didn't the Surgeon General herself  
22 say the whole question of debate over cause was a  
23 misguided debate in this very document?

24 A. If you can direct me to that page.

25 Q. Sure. It's small iii in the preface.

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1 A. The Surgeon General said -- and this is not peer  
2 reviewed, I might say. This is -- this part of the  
3 report is Dr. Elders' opinion --

4 Q. Could --

5 Professor, could I -- could you focus on 1, 2,  
6 3 -- fourth paragraph down.

7 A. Yes, I was going to focus on that.

8 Q. Okay. And could you read that --

9 A. I --

10 Q. -- as the Surgeon General's opinion at that  
11 time.

12 A. "A misguided debate has arisen about whether  
13 tobacco promotion 'causes' young people to smoke --  
14 misguided because single-source causation is probably  
15 too simple for an explanation for any social  
16 phenomenon. The more important issue is what effect  
17 tobacco promotion might have. Current research  
18 suggests that pervasive tobacco promotion has two  
19 major effects: it creates the perception that more  
20 people smoke than actually do, and provides a conduit  
21 between actual self-image and ideal self-image -- in  
22 other words, smoking is made to look cool. Whether  
23 causal or not, these effects foster the uptake of  
24 smoking, initiating for many a dismal and relentless  
25 chain of events."

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1 Q. All right. Now, so what the Surgeon General  
2 said was that it was a misguided debate about cause;  
3 correct?

4 A. I don't think that's what she said.

5 Q. Okay.

6 A. She said --

7 Q. Did she --

8 A. She --

9 Please let me finish, Mr. Weber.

10 Q. Your Honor --

11 A. She said that the current research suggests that  
12 this pervasive tobacco promotion did have effects,  
13 the effects we've just been talking about, and she  
14 said whether causal or not; that is, whether we  
15 cause -- whether it's causal or not, these effects

16 foster the uptake of smoking. I think those are very  
17 strong causal statements on her part.

18 Q. Did she say it was a misguided debate about  
19 whether tobacco promotion caused young people to  
20 smoke?

21 A. She was saying why are we debating this issue?

22 Q. That was her language though; correct?

23 A. She was saying why are we even debating this?  
24 It's so obvious.

25 Q. It was so obvious, but the word "cause" wasn't

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1 used publicly in the report; was it?

2 A. It's so obvious that she said whether causal or  
3 not, these affect -- tobacco advertising and  
4 promotion -- these affect, foster the uptake of  
5 smoking, initiating for many a dismal and relentless  
6 chain of events. Dismal and relentless. These young  
7 people become addicted to smoking, become smoking --  
8 become -- and become smokers. That's what she's  
9 talking about. And she's talking about the conduct  
10 of the tobacco industry in this.

11 Q. Now, she also said the more important issue is  
12 what effect tobacco promotion might have; correct?

13 A. She said, yeah, that's -- what is it? What --  
14 what it might have --

15 And she says look at the current research, look  
16 at what we already know about it. We already know  
17 that it affects perceptions of the pervasiveness of  
18 smoking, that it affects people with low self-image.  
19 She already showed that there were some chain of  
20 events between tobacco advertising and promotion,  
21 these effects, and the uptake of smoking, and she  
22 said these effects foster the uptake of smoking.

23 Q. And she said whether causal or not, and then she  
24 went on to talk about what effects it might have;  
25 correct?

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1 A. She was saying let's not even worry about the  
2 words, let's look at what's really going on here, and  
3 what's really going on here is that advertising and  
4 promotion is affecting kids and they're starting to  
5 smoke.

6 Q. Now the reason she said the issue of cause was a  
7 misguided debate is because, in her judgment,  
8 single-source causation was too simple an explanation  
9 for any social phenomenon. Isn't that the reason she  
10 said that?

11 A. No. I think she -- she said that --

12 Well, in fact single-source causation is  
13 probably too simple for -- for an explanation. But I  
14 think she was also saying let's not focus in on this  
15 debate about causal, let's focus in on what tobacco  
16 advertising and promotion does do. And what it does  
17 do, even in 1992 when we were writing this, it says  
18 it affects pervasiveness of it and the self-image of  
19 young people, which in turn affects the uptake of  
20 smoking, initiating for many a dismal and relentless



21 chain of events. So I think she's very clear about  
22 what she thinks is going on in terms of tobacco  
23 advertising and promotion.

24 Q. Did she say a misguided debate has arisen about  
25 whether tobacco promotion causes young people to

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1 smoke, misguided because single-source causation is  
2 probably too simple an explanation for any social  
3 phenomenon?

4 A. I don't think we're talking about single-source  
5 causation in this -- in this trial. We're talking  
6 about the effects of the tobacco companies' behavior.  
7 We're -- we're talking about their behavior and how  
8 they -- their activities affect young people.

9 Q. Is the answer to my question yes, she said that?

10 A. I think I've given you the answer to your  
11 question now five or six times.

12 Q. Well actually I just asked that one. Is that  
13 what the Surgeon General said, a misguided debate has  
14 arisen about whether tobacco promotion causes young  
15 people to smoke, misguided because single-source  
16 causation is probably too simple an explanation for  
17 any social phenomenon, did she say that?

18 MS. WALBURN: Objection, asked and  
19 answered.

20 THE COURT: I think it's been asked and  
21 answered now.

22 Q. Now you would agree, as you just said, that  
23 you're not talking about single-source causation  
24 here; correct?

25 A. We're not talking about single-source causation  
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1 for why young people begin to smoke, but we are  
2 talking about the -- the -- the behavior of the  
3 tobacco industry and, as we saw yesterday, document  
4 after document showing that the tobacco industry  
5 realizes the importance of youth, planned campaigns  
6 against youth, targeted youth, and got youth to start  
7 smoking.

8 Q. Now did you not say a moment ago, professor,  
9 that we're not talking about single-source causation  
10 on this issue of what causes youth to smoke?

11 A. Yes, I said that there are -- there may be more  
12 than one cause.

13 Q. And indeed, the 1994 Surgeon General's report in  
14 the chapter you were primarily responsible for went  
15 through a wide variety of psychosocial risk factors  
16 that have been associated with smoking initiation;  
17 didn't it?

18 A. In the chapter that I wrote, we went through a  
19 large number. Very few of them were really very  
20 strongly predictive of smoking onset, there were only  
21 a handful, and nowhere in that chapter did we talk  
22 about -- nowhere in the chapter that I can remember  
23 did we talk about any of these risk factors causing  
24 the onset of smoking.

25 Q. Right. You didn't use the word "cause" for any

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1 of the risk factors in the '94 report; correct?  
2 A. Well we used the word "cause" when we were  
3 talking about the tobacco advertising and promotion.  
4 We used this specifically in chapter five. We said  
5 we weren't ruling out cause. It was the only risk  
6 factor, it was the only factor in which we even  
7 considered cause, and we said we weren't ruling it  
8 out; that tobacco advertising and promotion were  
9 affecting a variety of risk factors which in turn  
10 were affecting the smoking behavior of young people.

11 Q. Would you agree with me, professor, that with  
12 respect to all of the risk factors in the 1994  
13 report, there was not one which the report said was a  
14 cause of smoking initiation, using the word "cause?"  
15 Not one?

16 MS. WALBURN: Objection, asked and  
17 answered.

18 THE COURT: You may answer that.

19 A. The only time that I can remember, because I  
20 haven't memorized the report, that we used the word  
21 "cause" was in chapter five when we were -- when we  
22 were talking about cigarette advertising and  
23 promotion, and we said we could not rule out cause,  
24 we could not rule out cause. And then we said  
25 tobacco advertising and promotion affects these

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1 factors, which in turn affect youth smoking behavior.  
2 That's a causal link.

3 We did not, as I said before, use the exact word  
4 "causal" because there were limitations to this  
5 report. We needed more data, which I shared with you  
6 yesterday, and we wanted to have -- to be able to  
7 look at some of the industry documents. And now in  
8 this case we've looked at hundreds of documents.

9 Q. So the answer is no, that this '94 report did  
10 not use the word "cause" with respect to any of the  
11 risk factors identified in the sense of concluding  
12 that that risk factor caused smoking; is that  
13 correct?

14 A. As I said, in chapter five we focused on  
15 cigarette advertising and promotion and we used the  
16 word "cause" in that chapter. We said we weren't  
17 ruling out cause. And we presented a causal argument  
18 that tobacco advertising and promotion causes this  
19 sense of pervasiveness, creates an image that kids  
20 like that affects the -- the functions, those  
21 developmental tasks that we spent a lot of time  
22 talking about yesterday, and those in turn cause  
23 young people to start smoking. So we presented a  
24 causal argument but did not publicly say causal. But  
25 we were very explicit in saying, in only that chapter

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1 and only talking about advertising, that we were not

2 ruling out causal.  
3 Q. So you did not say that any of the risk factors  
4 were in fact causal; correct?

5 MS. WALBURN: Objection, asked and  
6 answered.

7 THE COURT: I think we've covered it.

8 Q. Now, could you turn to page 130 of the '94  
9 report, professor. Do you have that there?

10 A. Yes, I do.

11 Q. And do you see table three, which is a table  
12 that the report adapted from the Conrad and Flay  
13 study?

14 A. Yes, I see that.

15 Q. And that was a table of predictors of smoking  
16 onset in 27 prospective studies?

17 A. Yes, it was.

18 Q. And what Conrad, Flay and Hill did was they  
19 summarized the findings of 27 prospective studies on  
20 the onset of smoking that had been published since  
21 1980; correct? If you look up in that paragraph on  
22 the -- first sentence in the paragraph on the left.

23 A. Yes. I reviewed Conrad, Flay and Hill quite  
24 extensively, and I'd like to point out that the data,  
25 the sources for these 27 studies, the absolute latest

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1 study, which is shown on page 125, is 1990, and those  
2 studies in fact were done in the Neatherlands and in  
3 England. So that although in 1992, when we were  
4 writing the Surgeon General's report, this was an  
5 important document, it really reflects old data, it's  
6 data from the '80s, so it doesn't reflect all of that  
7 new research that I -- I spoke to yesterday.

8 Q. Now the list that was prepared from Conrad, Flay  
9 and Hill and that was published in the Surgeon  
10 General report listed predictors of smoking onset;  
11 correct, from 27 separate studies?

12 A. Yes. These were studies that were done over  
13 time. But the time period could be very short, it  
14 could be three months, six months, they also went to  
15 a few years. So they were prospective studies in  
16 that sense.

17 Q. And not one of the predictors listed here of  
18 smoking onset was advertising or promotion; correct?

19 A. Well they looked at that, but in fact in that  
20 psychosocial literature there had only been at -- as  
21 of in the late '80s, I believe, about five studies  
22 had been published which did show -- at least one  
23 showing prediction.

24 As I said yesterday, really the bulk of the  
25 research has been published in the 1990s and so

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1 couldn't be reflected --

2 This is really a rather old document.

3 Q. Okay. I'm -- I'm not asking you now, professor,  
4 about whether the '94 report included information  
5 published afterwards. I just want to ask you about  
6 what was in the '94 report.

7 A. Yes.  
8 Q. So let me make my --  
9 I just hope that makes my question clear.  
10 A. And I'm -- and I'm trying to explain to the jury  
11 that they might be looking at -- at old -- at old  
12 data that's not reflective of -- it doesn't represent  
13 what we know now. So --  
14 Q. So it -- I'm sorry. Are you --  
15 Were you finished?  
16 A. Yes, I was.  
17 Q. Okay. So it's true, is it not, that out of the  
18 27 studies looked at by Conrad, Flay and Hill and  
19 summarized in this chart in the chapter you were  
20 responsible for, advertising and promotion are not  
21 listed as predictors of smoking onset; is that true?  
22 A. In his research he only looked at, I believe,  
23 two -- one study, I think, one or two studies in  
24 which there wasn't a negative finding, there was no  
25 positive finding from the 1980s which -- cso that  
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1 wasn't included in it.  
2 However, if we can remember from yesterday, that  
3 advertising and promotion affect many of these  
4 factors listed here. Peer use, we saw how the  
5 tobacco companies targeted peers, and you can see  
6 that, peer use and approval, that 84 percent of the  
7 studies showed that peer use and approval was a  
8 predictive factor. Normative estimate, well that  
9 means exactly what I was talking about yesterday when  
10 I shared with you how we asked students in the  
11 classroom how many of their peers smoke, the -- the  
12 perception of prevalence, that's what normative  
13 estimates mean, we showed that cigarette advertising  
14 and promotion is -- affects normative estimates. And  
15 we -- we also know that it affects certain attitudes  
16 which in turn affects smoking behavior.  
17 So even though in the 1980s there wasn't much  
18 research on cigarette advertising and promotion and  
19 its effect on youth behavior, we're already being  
20 able to see how it would work. And the tobacco  
21 companies could see how it would work, too. They  
22 had -- they had the Surgeon General's report. They  
23 know what they can target in terms of youth smoking.  
24 Q. Finished?

25 MR. WEBER: Your Honor, I'd move to strike  
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1 the answer. The question was whether advertising was  
2 listed as a predictor in the chart in the Surgeon  
3 General's report. I'd move to strike the entire  
4 answer.

5 THE COURT: Well I'll let the answer stand,  
6 but you can ask the question again, if you want,  
7 after we take a break.

8 MR. WEBER: Okay. Thank you, Your Honor.

9 THE CLERK: Court stands in recess.

10 (Recess taken.)

11 THE CLERK: All rise. Court is again in

12 session.  
13 (Jury enters the courtroom.)  
14 THE CLERK: Please be seated.  
15 THE COURT: Counsel.  
16 MR. WEBER: Thank you, Your Honor.  
17 BY MR. WEBER:  
18 Q. Professor, do you recollect before we took our  
19 break I asked you a question about whether the 1994  
20 Surgeon General's report classified advertising as a  
21 risk factor or as something else, and you said,  
22 quote, "It was not only -- it was not only  
23 categorized as a risk factor, it was also seen as a  
24 direct influence on teen-age smoking behavior." Do  
25 you remember saying that?

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1 A. Yes, I do.  
2 Q. And that -- that is what the --  
3 A direct influence; correct?  
4 A. Yes, direct influence.  
5 Q. Now the fact of the matter is that in the very  
6 chapter you wrote, the Surgeon General's report said  
7 it only indirectly affected youth smoking; didn't it?  
8 A. I'd have to see that, where it's said.  
9 Q. Could you turn to page 123 of the Surgeon  
10 General's report, and could you read the paragraph --  
11 or the first three sentences that begin "Psychosocial  
12 risk factors..." professor.  
13 A. "Psychosocial risk factors for tobacco use can  
14 be viewed as a continuum of proximal to distal  
15 factors. Personal and behavioral factors that  
16 directly affect an individual's choice to use tobacco  
17 (when a cigarette is offered) are considered proximal  
18 factors, whereas environmental and sociodemographic  
19 factors (such as billboard advertising and household  
20 income) that indirectly affect the accessibility or  
21 acceptability of tobacco use are classified as distal  
22 factors."  
23 Q. Now --  
24 And it said the environmental factors there were  
25 would cause indirect effects in that sentence;

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1 correct? Is that what that said?  
2 A. Well it doesn't include what we came to the  
3 conclusion of. This is at the beginning of chapter  
4 four where I'm trying to introduce, really, the idea  
5 of proximal and distal.  
6 When I said direct, was a direct effect, what  
7 I'm referring to is going back to what I said before,  
8 that what we found in chapter five was that cigarette  
9 advertising and promotion affected the image, the  
10 image young people had, perceptions of pervasiveness  
11 and the function, which in turn affect their smoking  
12 behavior, and I consider that direct, that that's a  
13 direct effect. So when I said direct, that's what I  
14 meant.  
15 Now this kind of effect can also occur  
16 indirectly, it can occur through other kinds of

17 sources, but in the case of chapter five where we  
18 have data that links cigarette advertising and  
19 promotion to these factors which in turn affect youth  
20 smoking behavior, that is a direct chain of events.

21 Q. Now in this paragraph you just read, it  
22 classifies environmental factors as indirectly  
23 affecting; correct? Is that what it says?

24 A. Well that doesn't mean that all environmental  
25 factors indirectly affect people. As I explained

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1 yesterday, that that outer ring can directly affect  
2 people, and so I didn't mean in this that all  
3 environmental factors affect. These were examples  
4 that might be -- that might be indirect.

5 Q. But it does say the environmental factors  
6 indirectly affect; correct?

7 A. I said, for example, they might, that some  
8 environmental factors. I didn't say all  
9 environmental factors indirectly affect.

10 Q. And right across from that quote, if you'll see,  
11 you listed environmental factors; correct?

12 A. Yes, there's a -- a set of environmental  
13 factors, of which the strongest ones, peer use and  
14 advertising, directly affect youth smoking behavior.

15 Q. So you meant to say there that advertising  
16 directly affected youth smoking behavior; is that  
17 what that chart indicates?

18 A. This chart was for chapter four in which we were  
19 referring to particular factors as risk factors, and  
20 I was trying to talk about the difference between  
21 proximal and distal, which is a very different idea  
22 in social psychology than from what it is in law, as  
23 I understand. So that that was really -- these were  
24 examples that I -- that I was using.

25 It's very clear that environmental factors can

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1 directly influence people's behavior.

2 Q. That's not what that subparagraph says, though;  
3 is it, ma'am? It says environmental factors  
4 indirectly affect.

5 A. These were examples that I was using in this  
6 introduction.

7 Q. And one of the examples you chose as an  
8 environmental factor was advertising; right?

9 A. One of the examples I chose was billboards. I  
10 didn't talk about all of the different kinds of  
11 cigarette advertising, and I certainly didn't talk  
12 about the promotional activities which we saw  
13 yesterday were very influential in -- in getting kids  
14 to start smoking.

15 Q. But advertising was listed as an environmental  
16 factor in the chart right to the right of that  
17 paragraph; correct? Isn't that right?

18 A. Well yes, it was listed in the chart, and then  
19 we took it out and created an entire new chapter  
20 about that.

21 Q. Now let me go back to that Conrad article we

22 were talking about a moment ago. You remember that,  
23 professor? On page 130. Are you there?

24 A. Yes, I am.

25 Q. Okay. And you said that you thought there were  
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1 one or two studies that Conrad had looked at that  
2 specifically examined the issue of whether  
3 advertising could be identified as a risk factor for  
4 initiation. Remember that?

5 A. As a predictive --

6 He was looking at predictive --

7 Q. Predictive.

8 A. -- factors. Yes, I think he looked at two  
9 studies, one or two studies.

10 Q. And -- and in fact he did look at two studies,  
11 and they both concluded that exposure to advertising  
12 or promotion was not predictive; correct?

13 A. He found no influence in that study.

14 But please be reminded that this Conrad, Flay  
15 and Hill article represents old data. The -- there's  
16 27 studies. The two old -- the two oldest studies  
17 are in 1990. Nine of the 27 studies, a third of the  
18 studies, aren't even -- weren't even done in the  
19 United States, so they were done in -- in other  
20 countries, which might affect different kind of  
21 relationships. So -- so that's what he reported.  
22 But this is old data.

23 Q. But you relied on the Conrad article including  
24 the data from other countries; correct?

25 A. I relied on it in part. As you, I'm sure, read  
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1 this -- this chapter, there were -- I used -- this is  
2 only one article, and since I spent, I think, two  
3 months reading articles, this is only one that I  
4 relied on.

5 Q. Yeah. Without saying it's the entirety, it was  
6 a piece of what you relied on, and it included  
7 international data; correct?

8 A. It's a piece of what I relied on, and -- and it  
9 did include nine studies on -- on youth smoking.

10 Q. And do you remember the statement in the Conrad  
11 article -- I -- I can give you a page reference if  
12 you'd like -- that longitudinal studies, prospective  
13 studies can't prove cause, and that's why he said we  
14 use the word predictor? Do you remember that in  
15 there?

16 MS. WALBURN: Could we have the exhibit  
17 number and the page number, please?

18 MR. WEBER: Surely. That's Exhibit  
19 AM002661.

20 Q. And professor, I think you'll find that at tab  
21 15 in the volumes that are marked with number tabs.

22 A. And which page were you on?

23 Q. It's page 1712, in the middle.

24 A. This doesn't turn very well.

25 Q. Can you --

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1 A. Excuse me. What tab is it again?  
2 Q. Tab 15, ma'am.  
3 A. And page?  
4 Q. Page 1712, the second full paragraph.  
5 A. Yes.  
6 Q. And did the authors of this say, "Because even  
7 the longitudinal method does not provide proof of  
8 causation, we refer to variables measured at one time  
9 that relate to smoking behavior at a subsequent time  
10 as predictors rather than causes?"  
11 MS. WALBURN: Objection to the form of the  
12 question. If counsel is going to be reading from the  
13 document, I think it should be introduced into  
14 evidence.  
15 THE COURT: Okay. Are you going to be  
16 introducing this document, counsel?  
17 MR. WEBER: Oh, I was -- I --  
18 I certainly can, Your Honor. I was just going  
19 to see if she remembered if it was one of her  
20 reliance materials and not necessarily introduce it,  
21 but if --  
22 THE COURT: You don't have to if you don't  
23 want.  
24 MR. WEBER: I'm -- I'm sorry?  
25 THE COURT: You need -- you don't have to

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1 if you don't want to.  
2 MR. WEBER: Okay. Let -- maybe I'll see  
3 what the answer is.  
4 THE COURT: Okay. Depending on the answer?  
5 (Laughter.)  
6 THE COURT: Go ahead.  
7 BY MR. WEBER:  
8 Q. Is that what the article said?  
9 A. Well the article said that you can't just rely  
10 on longitudinal data to establish causation. I think  
11 that Dr. Samet introduced to you the five criteria  
12 that scientists in -- in medicine and in public  
13 health and epidemiology use for causation, and  
14 temporality, that is, does a factor at point one  
15 predict behavior at point two, is only one of those.  
16 So that's what he was looking at in these 27, was  
17 only one of the five criteria for causality. And so  
18 he -- he decided that he would -- or they, there's  
19 three authors, decided that they were not going to  
20 use the term "causality."  
21 MR. WEBER: Your Honor, I'd move the  
22 admission as a learned treatise of Exhibit AM002661.  
23 MS. WALBURN: No objection.  
24 THE COURT: The court will receive AM00261.  
25 MR. WEBER: 26 -- I think it's 2661. Did I

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1 mishear you, Your Honor?  
2 THE COURT: Okay. It's AM002661.



3 MR. WEBER: Yes.  
4 THE COURT: Correct? That's what will be  
5 received.

6 BY MR. WEBER:

7 Q. Now -- and this is --

8 That language right there, "Because even the  
9 longitudinal method does not provide proof of  
10 causation, we refer to variables measured at one time  
11 that relate to smoking behavior at a subsequent time  
12 as predictors rather than causes," and that was the  
13 language from the Conrad article; correct?

14 A. Yes. That is Conrad, Flay and Hill's opinion of  
15 what term causation --

16 And certainly temporality, one predicting the  
17 other, is -- is part of causality. And there are  
18 other things such as: Is the data consistent? Is it  
19 powerful? Is it specific to youth? Does it make  
20 sense? So there's other criteria. I think that's  
21 why --

22 But this is only one -- one author, one person's  
23 opinion. There's no -- they don't even have a  
24 citation for their statement. This is just their  
25 opinion.

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1 Q. But their opinions were used in the '94 Surgeon  
2 General report in the chapter you wrote with a  
3 full -- half-page chart; correct?

4 A. Their data was used in the Surgeon General's  
5 report, not necessarily their opinions.

6 Q. Now isn't it true, professor, that for a number  
7 of years now researchers in both the public health  
8 and advertising literature have been conducting  
9 studies to identify risk factors for smoking  
10 initiation?

11 A. Yes. There have been studies probably since the  
12 1970s looking at reasons why adolescents might start  
13 smoking.

14 Q. And speaking of the '70s, do you recall a 1972  
15 study by the Department of Health, Education and  
16 Welfare on teen-age smoking and national patterns?

17 A. I believe I looked at -- I think it was in the  
18 boxes that were delivered, but I don't remember the  
19 data. And I would have to look at that --

20 Q. Okay.

21 A. -- data to comment on it.

22 Q. Yeah. I didn't mean to make it sound like an  
23 exam, that you remembered everything.

24 Could you turn to tab 16, to Exhibit AM002026.  
25 Do you have that, ma'am?

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1 A. Yes, I do.

2 Q. And if you could turn to the front page of that,  
3 is that a report on teen-age smoking in 1972 from the  
4 Department of Health, Education and Welfare?

5 A. Yes, that's what it appears to be.

6 Q. And it's a government report?

7 A. Yes, it is.

8 Q. And reports of this type from the Department of  
9 Health, Education and Welfare include information  
10 that you from time to time rely on; correct?

11 A. Well I really doubt I'd go back to 1972 at this  
12 point in time, but perhaps when I first started in  
13 the field I might have looked at this -- at these  
14 data.

15 MR. WEBER: Your Honor, I'd move the  
16 admission of Exhibit AM002026 as a government report  
17 and as a learned treatise.

18 MS. WALBURN: Objection as a learned  
19 treatise, since the proper foundation hasn't been  
20 laid, but no objection as a government report.

21 THE COURT: Okay. AM002026 will be  
22 received as a government report.

23 BY MR. WEBER:

24 Q. Now if you could turn to page five, professor,  
25 and down in the lower right-hand column where it

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1 begins, "Discussion," do you see that?

2 A. Yes, I see that.

3 Q. And what they said in paragraph -- or on -- on  
4 page five in the section labeled "Discussion" was  
5 that adult smoking rates have gone down, but in '68  
6 to '70, teen smoking rates have gone up; correct?

7 A. They said that in January 1968 an estimated  
8 three million teens smoked, and in January '70 that  
9 had risen to four million.

10 Q. Okay. And in the next paragraph they explain  
11 why they did this study. They said they wanted to  
12 see why -- what -- what the characteristics were of  
13 teen-agers who did and didn't become smokers at a  
14 time when overall consumption was decreasing. Do you  
15 see that?

16 A. Yes.

17 Q. Okay. Could you turn to the next page, page  
18 six, and the first full paragraph on page six. Could  
19 you read that for me, please.

20 A. It says that "While there are many factors in  
21 the environment of the child that influence his  
22 taking up, or not taking up, the smoking habit, the  
23 one that has by far the most influence is the smoking  
24 behavior of those around him. This is not surprising  
25 when we consider how most members of a family adopt

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1 the family patterns. If parents and older brothers  
2 and sisters are avid readers, the child grows up in  
3 an atmosphere where reading is the thing to do, where  
4 books are readily available, and we expect him at  
5 least to try reading. The same phenomenon is  
6 operating in the area of smoking. In households  
7 where both parents are present, the teen-ager is much  
8 more likely to be a smoker if the parents smoke. In  
9 fact, if both parents smoke, the teen-ager has about  
10 twice the likelihood of smoking than if neither  
11 parent smokes; the rates 18.4 percent and 9.8. This  
12 was with one parent who smokes with a rate of 13.8

13 percent."

14 Q. Now in this study, then, one thing identified by  
15 the United States Department of Health, Education and  
16 Welfare is family smoking patterns; correct?

17 A. Well, you know, this document was written right  
18 after this phenomenon in 1972. The document  
19 identifies parents smoking, and it's a very good  
20 example of why we need more information, because as I  
21 reported yesterday, there's two things relevant to  
22 this particular statement. One is that as more  
23 research has been done, including the Conrad, Flay  
24 and Hill article that we just looked at, parents  
25 smoking as a predictor of youth smoking behavior has

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1 now been not ruled out, but it's been shown to be  
2 much, much less influential than other factors  
3 because they didn't control for certain things, on  
4 the things going on in a young person's life. So one  
5 study might find this, but over the course of studies  
6 they found that parents were not a primary factor.

7 The other thing is that this was a  
8 period -- they're talking about 1968 to 1970 -- and  
9 when John Pierce, a professor at the University of  
10 California-San Diego, did an extensive analysis of  
11 this time, he found that those increases in youth  
12 smoking from three million to four million were only  
13 among females, not young males, and followed the  
14 introduction of female brands into the market in the  
15 late 1960s. And that information has only come out  
16 from -- from Dr. Pierce during the 1990s doing  
17 retrospective analyses of what was going on in that  
18 time. So in fact this government document, which was  
19 well-intended and used what was available in the --  
20 at that time, is pretty outdated, and its  
21 conclusions, although seemed good at the time, really  
22 are not relevant right now.

23 Q. Is the answer to my question yes? My question  
24 was: In this study, one thing identified by the  
25 United States Department of Health, Education and

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1 Welfare is family smoking patterns; correct? Is the  
2 answer to that yes?

3 A. In this outdated study they did identify parents  
4 as an influence on smoking, but I felt that you  
5 should -- that we should at least discuss the context  
6 of this particular government document and what we --  
7 a little bit more -- a little bit more of what we  
8 know of this time period now that we have had more  
9 research done.

10 Q. Now could you read the next paragraph,  
11 professor.

12 A. What page are we on?

13 Okay.

14 Q. That's on page six. It's the paragraph right  
15 after the one we were just on.

16 A. "If parents have such a profound influence, what  
17 about older brothers and sisters? Again, we find a

18 striking relationship between the behavior of the  
19 older members of the family and that of the younger  
20 members. In homes where both parents are present,  
21 boys with an older brother or sister are twice as  
22 likely to smoke if one or more of the older siblings  
23 smoke than if none smoke. The relationship is even  
24 stronger among girls, with a four to one ratio; 24.8  
25 percent of girls with one or more smoking older

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1 siblings are smokers while only 5.6 percent of those  
2 with older siblings, none of whom smoke, have taken  
3 up the habit."

4 Q. Now professor, would you agree that one other  
5 thing identified in this Health and Education --  
6 Health, Education & Welfare Department study, one  
7 other thing identified is the relationship, the  
8 striking relationship between the behavior of the  
9 older siblings and that of the younger child who  
10 begins to smoke? Is that a factor they identified  
11 here?

12 A. Well once again, I'd like to explain before I  
13 completely answer your question, and that is that  
14 once again recent research still shows somewhat of a  
15 strong effect between siblings smoking and young  
16 people smoking. In a way, you can think of siblings,  
17 because they're so close in ages, kind of like a part  
18 of the peer group. But if we remember from yesterday  
19 we looked at two articles, one article by Schooler,  
20 et al, was the one that showed that very high  
21 exposure to advertising and promotional campaigns,  
22 and they found that exposure to advertising and  
23 promotion was a much stronger predictor of smoking  
24 than sibling smoking.

25 The last study I reported, the Pierce study,

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1 also showed that having a favorite advertisement,  
2 even being willing to wear one of those promotional  
3 items, was a much stronger factor than either peer or  
4 sibling smoking. And in fact in that study, sibling  
5 smoking didn't turn out to be a risk factor at all.

6 So yes, in this particular document they said  
7 yes, siblings are an effect, but this is an outdated,  
8 old document.

9 Q. Now could you go on to the next paragraph,  
10 professor, and read that, down to the bottom of the  
11 page.

12 A. Yes. It says, "When the combined effect of  
13 smoking of parents and older siblings is considered,  
14 the concept of family patterns is reinforced. The  
15 lowest level of smoking is found among teen-agers who  
16 live in households where both parents are present and  
17 neither smokes, and who have older siblings, none of  
18 whom smoke. Less than one in twenty have become  
19 regular smokers. This compares with one in four in  
20 families with at least one parent and one older  
21 sibling who smoke."

22 Q. So that in this paragraph, what they identify is

23 that for teens living in a home with no smokers --  
24 well strike that -- that for teens who live in a home  
25 where at least one parent and older sibling smokes,  
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1 they have over five times, in this study, greater  
2 risk of beginning smoking, correct, compared to those  
3 who live in homes with no smokers? Is -- is that  
4 what that data shows in that paragraph?  
5 A. This early data didn't control for any factors  
6 such as age of the person or gender of the person or  
7 socioeconomic status, things that might affect  
8 this -- this relationship.

9 Those same two studies that I just talked about  
10 a minute ago both showed that cigarette advertising  
11 and promotion were a stronger factor, a stronger  
12 cause of young people smoking than sibling or parent  
13 smoking or family. You could think of family smoking  
14 combined. So in this outdated document, that's what  
15 they say. But it's really not what we found, however  
16 it is, 26 years later.

17 Q. Now, you didn't mean to say, did you -- I may  
18 have misunderstood you. You didn't mean to say that  
19 this didn't include data on boys and girls.

20 A. No. What I meant by that was that they --  
21 Actually I don't know because I haven't --

22 Q. Well I was going to say you, can --

23 A. -- studied this.

24 Q. -- take a moment and look through the back.

25 There's all sorts of data on both boys and girls, and  
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1 in the discussion section we just read they collapse  
2 it together.

3 A. Right. And that's a particularly wrong thing to  
4 do for this time period, 1968 to 1970, because if you  
5 remember my very first chart, the percentage of  
6 under-age teens, females doubled, doubled in  
7 prevalence, a huge increase; that didn't occur for  
8 males during that time. So gender is a pretty  
9 important factor, what -- because girls were the ones  
10 increasing during this period of time, not boys.

11 Q. Now in the period of time they were looking at,  
12 '68, '69 and '70, cigarettes were advertised on  
13 television; weren't they?

14 A. Yes, they were.

15 Q. And the siblings --

16 Well the teen-agers who lived in a home where  
17 there was no smoking were exposed to those ads;  
18 correct?

19 A. Please repeat that.

20 Q. What I'm saying is that whether a teen lived in  
21 a home with other smokers or in a home where there  
22 weren't any smokers, they were exposed to that  
23 advertising; correct?

24 A. Well during this period, not only were they  
25 exposed to advertising, but they were exposed to

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1 counter-advertising, and you can't say whether -- how  
2 much one sibling looked at it or another. I  
3 mean -- so yes, it -- they were exposed to cigarette  
4 advertising and, during this period, counter-  
5 advertising.

6 Q. And even though both groups were exposed to  
7 advertising, these differences were observed in this  
8 study; correct?

9 A. Differences between males and females were  
10 observed during this period because there was a huge  
11 increase in the amount of advertising that was aimed  
12 at females. And remember that that increase was  
13 only -- the increase we found in smoking was only for  
14 females under 18 years old, that that increase didn't  
15 occur for --

16 So the parents were role models. The mothers  
17 weren't smoking more and the teen-age girls saying,  
18 "Oh, my mother is smoking." That wasn't it. It  
19 would be under-age females who were smoking.

20 Q. I'm sorry, my question may not have been clear.

21 What I asked was this study shows these  
22 differences between teen initiation rates with  
23 respect to families where smokers lived in the house  
24 and families where smokers didn't live in the house,  
25 they showed these differences even though,

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1 presumably, all groups were exposed to cigarette  
2 advertising; correct?

3 A. I don't really know how to answer that question.  
4 There's differences with males and females. I don't  
5 know how to answer you that question.

6 Q. Could you turn to -- hang on just a moment --  
7 oh, this is one of the Velo-bound ones. It's  
8 AM002033. That would not be in one of the binders,  
9 it would be in one of the Velo-bound ones, ma'am.

10 Do you have that?

11 A. Yes, I do.

12 Q. And can you identify that as a report by the  
13 Department of Health, Education and Welfare on  
14 "Teenage Smoking: Immediate and Long Term Patterns,"  
15 dated November 1979?

16 A. Yes, it is.

17 MR. WEBER: I'd like to, Your Honor, move  
18 the admission as a government report for Exhibit  
19 AM002033.

20 MS. WALBURN: No objection.

21 THE COURT: Court will receive AM002033.

22 BY MR. WEBER:

23 Q. Now could you turn to page 18, professor, and  
24 would you read that paragraph labeled "Peer  
25 Patterns," please.

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1 A. "Respondents were asked how many of their four  
2 best friends have" -- (clearing throat) excuse me --  
3 "have at least experimented with smoking cigarettes,

4 and, of those, just" -- or "how many had just  
5 experimented, how many smoked occasionally, and how  
6 many were regular smokers. Among respondents who  
7 smoke, an overwhelming majority indicated that at  
8 least one of their four best friends was a regular  
9 smoker, while only 10 percent of the boys and 5.9  
10 percent of the girls indicated that none of their  
11 four best friends smoked regularly, and as few as 2.2  
12 percent of the boys and none of the girls said that  
13 none of their friends had even experimented with  
14 cigarettes. Nonsmokers showed exactly the opposite  
15 pattern. Only one-third said that one or more of  
16 their best friends smoked" -- or "best friends were  
17 regular smokers, while more than two-fifths said that  
18 no friend smoked regularly, and another one-fifth had  
19 no best friend who had even experimented. There is  
20 no question that smokers have friends who smoke, and  
21 nonsmokers have friends who do not smoke."

22 Q. Now, this government study in 1979, then,  
23 identified what they call peer patterns as being  
24 associated with smoking initiation; correct?

25 A. This government document says that if you're --

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1 if you have peers who smoke, that that can be an  
2 influence on -- on your smoking.

3 Q. Now if you could turn to, I think, chapter four  
4 of the '94 report. Is that the chapter you wrote?

5 A. I wrote part of it.

6 Q. And if you could turn to page 127.

7 Now on page 127, professor, you identify  
8 socioeconomic status -- socioeconomic status as a  
9 predictor of smoking initiation in multiple studies;  
10 correct?

11 A. Just a second.

12 Yes, we identified it, and it wasn't one of the  
13 strongest predictors in Conrad, Flay and Hill, but it  
14 was a predictor. We identified it --

15 Q. And --

16 A. -- as a predictor.

17 Q. I'm sorry. Were you finished? I'm sorry.

18 A. Yes.

19 Q. And socioeconomic status was a predictor if it  
20 was low socioeconomic status; correct?

21 A. Yes. It's a -- it's somewhat confounded  
22 with -- in that African American people tend not  
23 to -- youth tend not to start smoking as much as  
24 white youth even -- so it's a bit confounded in  
25 that -- in that way.

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1 Also, we tended to look at socioeconomic status  
2 more as an indicator of who would be -- what kinds of  
3 groups would be at highest -- you know, should  
4 receive our programs the -- the most, not an  
5 individual-by-individual basis.

6 Q. And low socioeconomic status means those who are  
7 less economically fortunate, less well off; correct?

8 A. Yes. But this wasn't our strongest -- our

9 strongest predictor.  
10 Q. I -- I didn't ask if it was your strongest, I  
11 just asked whether you identified it as a predictor  
12 in multiple studies, and that's low socioeconomic  
13 status.  
14 I apologize for my writing, professor, but  
15 that's as well as I guess I can do. Now --  
16 And with respect to people and teens who are low  
17 socioeconomic status, mid socioeconomic status or  
18 high socioeconomic status, they're all exposed to  
19 advertising as well; correct?  
20 A. Well it may be that those at low socioeconomic  
21 status may be more vulnerable to -- particularly to  
22 promotional activities, and that is that if you have  
23 a promotional activity that -- for example, the  
24 coupon, in which you can get two cigarettes -- you  
25 buy one cigarette pack, you get another cigarette

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1 pack, well that might be more appealing to someone of  
2 a low socioeconomic status. Also getting some kind  
3 of promotional activity. So in a way they might be  
4 more -- more receptive to tobacco advertising and --  
5 and promotion.

6 And in fact, in some of the documents the  
7 tobacco industry talked about underachiever --  
8 teen-agers that are underachievers, and, you know,  
9 how to place their marketing toward these  
10 underachievers.

11 Q. Now my question was the low, mid and high  
12 socioeconomic status teens were all exposed to  
13 advertising; were they not?

14 A. Yes, they were all exposed to advertising.

15 Q. Now another factor you identify, and it's on  
16 page 127 as well, is the level of parental education,  
17 and you stated that the level of parental education  
18 has been shown to have a significant impact on  
19 adolescent smoking behavior in some studies. Is that  
20 what the report stated on page 127?

21 A. We didn't list this as a major factor because it  
22 is completely -- almost completely confounded with  
23 socioeconomic status when people do surveys, so I  
24 wouldn't consider that an independent --

25 Q. Well --

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1 A. You know, a factor. I mean if you're making a  
2 list of factors, we should talk about the important  
3 factors, the most important of which is the source of  
4 all this influence, which is the tobacco companies.  
5 They are the ones that start the source, influence  
6 these factors which go on to teen-age smoking. So  
7 you can continue down this list for the rest of the  
8 day, but the source of cigarettes is the tobacco  
9 industry, and they figured out how to influence these  
10 factors which in turn will influence smoking.

11 Q. Now do you agree with me that parental education  
12 has been shown to have a significant impact on  
13 adolescent smoking behavior in some studies? Is that



14 a true statement or not?  
15 A. It has been shown in some studies, but it -- we  
16 didn't find it in this review to be worthy to be a  
17 major factor, so we didn't include it. And I don't  
18 believe Conrad, Flay and Hill included it either. So  
19 I don't think it's really worthy -- if you're making  
20 a list here, I don't think it's really worthy of that  
21 list.  
22 Q. Okay. Well it was worthy enough to be in the  
23 '94 report; wasn't it?  
24 A. Yeah. We were trying to be comprehensive.  
25 Q. Okay.

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1 A. Which --  
2 Q. Okay. Well let's list it as something you  
3 discussed in your chapter in the '94 report as being  
4 associated with adolescent smoking in some studies.  
5 Now --  
6 And again, whether your parents have higher  
7 education or lower education, you're still -- teens  
8 are still exposed to advertising; correct?  
9 A. Yes. All -- really all teens, as we saw, were  
10 highly exposed to advertising.  
11 Q. Now another issue you discussed -- I want to get  
12 into more of this later, but let's just list it right  
13 now -- is ethnicity; correct? And that's discussed  
14 at page 128 of the report.  
15 A. I don't believe we came to any conclusion  
16 concerning ethnicity, because the studies were in  
17 fact not consistent in terms of ethnicity. The only  
18 very notable thing that has occurred, and that's  
19 since the late 1970s, is that African Americans have  
20 decreased their -- their smoking, and what's quite  
21 interesting about that is that they also have started  
22 to increase their smoking again in the 1990s. So  
23 all -- all teens, both genders, and all racial groups  
24 have started to increase their smoking in the 1990s.  
25 In this report I don't believe -- no, we didn't

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1 list it as a major factor, and neither did Conrad,  
2 Flay or Hill.  
3 Q. Now, the report does discuss later, though, does  
4 it not, the wide difference in teen smoking rates  
5 between African American youth and white youth?  
6 A. Well as a matter of fact, we didn't discuss it.  
7 Q. Okay.  
8 A. We presented data on it, but to this date, as  
9 far as I know, we don't really have a very good  
10 explanation for that. There's been some research  
11 going on in the 1985 Surgeon General's report, which  
12 hasn't come out yet because it hasn't gone -- gone  
13 through or been completed, is exactly on that topic.  
14 And so my reading of the literature is that we don't  
15 have an answer for -- for the reason in the decrease  
16 among the African American population.  
17 Q. Now another topic --  
18 Well let me put ethnicity up there as a possible

19 factor that you discussed in this '94 report.  
20 Correct?  
21 A. I hope that you don't think I'm agreeing to the  
22 factors that are on there, because I'm not.  
23 Q. I'm just listing factors discussed in the report  
24 here, professor.  
25 A. Well we have -- that's a -- well that's --  
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1 I hope you have a lot of paper.  
2 Q. Okay. Now another factor you listed as being  
3 associated with adolescents beginning to smoke were  
4 the number of parents living in the home; correct?  
5 A. What page are you on?  
6 Q. I'm sorry, I think 127.  
7 A. Yes. We said these findings must be interpreted  
8 with caution since most are from cross-sectional  
9 studies that were able to determine -- unable to  
10 determine with certainty which occurred first, living  
11 in the single-parent home or smoking. So this was --  
12 we --  
13 You know, in this report, I think, if you have  
14 read any of the Surgeon General's reports, they are  
15 really exhaustive in terms of the literature, and  
16 that's what I tried to do here. I also tried to  
17 summarize that with the first figure that I explained  
18 yesterday with the little X's as to which were found  
19 to be risk factors. Yesterday I tried to explain out  
20 of those what are the most important factors, and  
21 most importantly that the factor we found of critical  
22 importance was cigarette advertising and promotions,  
23 which we created our own chapter on.  
24 Q. Now --  
25 So the answer is yes, that the single -- number  
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1 of parents living in the home was one of the factors  
2 identified; correct?  
3 A. No.  
4 Q. At least in some study?  
5 A. Well, you can put it on your list if you like,  
6 but I think I just read that these findings  
7 from -- it looks like it's three studies -- must be  
8 interpreted with caution, and so if you want that on  
9 your list, then that's fine, but it's not a very  
10 scientific approach.  
11 Q. Well all studies have to be interpreted with  
12 caution to determine what comes first and what  
13 follows; correct? That's called confounding. Do you  
14 agree with me?  
15 A. In this case we were saying that these were  
16 cross-sectional studies, they were associative  
17 studies, none of these had any temporal relationship  
18 to them, so that we were putting a big exclamation  
19 point there saying let's not blame the single parent,  
20 the single mother for their child beginning to -- to  
21 smoke. We didn't want that to -- to come out of this  
22 report because that's not what these data -- these --  
23 this information says.

24 Q. Now another factor you identified on page 129  
25 was that availability of cigarettes predicts the  
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1 onset of smoking. Do you see that?  
2 A. Yes. We saw that in this chapter, I really  
3 focused primarily on the demand side of the equation;  
4 that is, why might adolescents within themselves want  
5 to -- want to start smoking? But there's also a  
6 supply side to this that we haven't really -- really  
7 talked much about. And one point I'd like to make is  
8 that the supply side, access, is not independent of  
9 the tobacco industry. The tobacco industry is right  
10 in there at the retail level making cigarettes more  
11 attractive to people, in fact to young people, and in  
12 fact making them more accessible. If you have a -- a  
13 stand in -- when you walk in and it's a help-yourself  
14 stand for cigarettes, that's very tempting for a  
15 young person. So yes, there's both demand and  
16 supply, and the supply part we spent most of the time  
17 on because that's most of the research literature in  
18 chapter six on how to prevent adolescents from  
19 starting to smoke.

20 Q. Perhaps you didn't understand my question. My  
21 question was, quote: "Now another factor you  
22 identified on page 129 was that availability of  
23 cigarettes predicts the onset of smoking. Do you see  
24 that?"

25 A. Yes, I see --

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1 MS. WALBURN: Well objection, asked and  
2 answered. And in fact the reference which counsel is  
3 specifically citing, the entire page does include the  
4 discussion which Professor Perry just referenced on  
5 tobacco company actions.

6 THE COURT: Okay. You may answer the  
7 question.

8 A. What I said was that access is the supply side  
9 of the equation, it's the supply side, and certainly  
10 if adolescents have -- have access to cigarettes,  
11 that's going to make them -- make it easier to smoke.  
12 And the tobacco industry has been involved at the  
13 retail level, at the -- at the point-of-purchase  
14 level, not just making it attractive with those  
15 really neat advertisements we saw yesterday, the big  
16 signs of Camel, but also making it less expensive  
17 with coupons, giving a lighter with your cigarettes,  
18 or just making it easier to take a pack if you're in  
19 there. The tobacco companies in fact pay the  
20 retailers so that they will make the cigarettes be in  
21 prominent locations in their convenience stores, the  
22 stores where teen-agers go.

23 So yes, access is a factor, and the tobacco  
24 industry is right in there making it more accessible  
25 to young people.

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1 Q. Okay. So accessibility, if -- if I follow you,  
2 is -- is a factor; right?

3 A. Yes, it's a particular factor --

4 Remember when I went through the stages of  
5 smoking onset? It's a factor generally after the  
6 first trying stage. It's usually not a factor in the  
7 trying stage. You're not going to have -- generally  
8 for your first cigarette, you're not going to go to a  
9 convenience store and -- and buy a pack of  
10 cigarettes. That might -- that might --

11 And remember, the trying of cigarettes, that two  
12 out of three young people who try a cigarette go on  
13 to daily smoking, and that accessibility hasn't been  
14 shown to be related to that first -- to the first  
15 cigarette. It's generally down the level, the more  
16 you're smoking. So the -- the adolescents that are  
17 regular smokers, daily smokers, those are the ones  
18 that are more likely to -- to have -- need access  
19 or -- to cigarettes.

20 Q. Now another factor identified in the report on  
21 page 132 was parental reaction to smoking or parental  
22 attitudes towards smoking; correct? Kind of the  
23 bottom left-hand column.

24 My question is: Was that discussed in the  
25 Surgeon General's report as being associated with the

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1 onset of smoking?

2 A. You know, we discussed -- I discussed -- or we  
3 discussed, I should say, you know, most of the  
4 factors that have been identified in hundreds of  
5 studies. The purpose of this report is to be  
6 complete, to have a sense of completeness.

7 Parental reactions, and we as a peer group  
8 decided what were the most potent factors, what were  
9 the ones that really made a difference, those were in  
10 Table 1, and out of that cigarette advertising and  
11 promotion deserved its own chapter. So we can  
12 actually spend the better part of two -- of a few  
13 days going through chapters four and five factor  
14 after factor, because when I wrote this I tried to be  
15 complete.

16 I think in this part we're talking about two  
17 studies, that's two studies out of hundreds that I  
18 looked at said this, so in my -- that's my job in  
19 this is to be complete. But it didn't meet the  
20 requirements of being one of the major factors that  
21 we looked at. There was association in a couple of  
22 studies.

23 Q. Yeah. Now I didn't mean to ask a complicated  
24 question. Let me -- I'll ask: Is now another factor  
25 you identified on page -- oh, let me strike that.

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1 I'm reading off the wrong one.

2 Now another factor identified in the report on  
3 page 132 was parental reaction to smoking or parental  
4 attitudes towards smoking. That was all I asked.

5 And -- and is the answer to that yes?

6 MS. WALBURN: Objection, that was not the  
7 entire question that counsel asked. The question  
8 goes on.

9 THE COURT: Sustained.

10 Q. Okay. "Was that discussed in the Surgeon  
11 General's report as being associated with the onset  
12 of smoking?"

13 A. Well to repeat my answer, I included in this  
14 chapter -- which was peer reviewed, so I should say  
15 we included in this chapter any -- really just about  
16 any factor we found in any of these hundred studies,  
17 and from that we picked what we -- what we felt from  
18 the science at the time were the most important risk  
19 factors, and from that I told you yesterday what I  
20 felt, what I believed to be the most important  
21 factors. In addition, my peers and I took out  
22 cigarette advertisements.

23 So in direct answer to your question, yes, we  
24 talked about parental reaction, yes, there were two  
25 studies out of hundreds of studies, and yes, you can

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1 add that to your ever-growing list on the chart.

2 Q. Now, did you also state in this chapter that  
3 families in which parents are generally concerned and  
4 supportive or in which the children are involved in  
5 family decisions are homes in which adolescents are  
6 less at risk for smoking onset? Do you remember  
7 that?

8 A. Can you direct me to a particular --

9 Q. Sure.

10 A. -- page?

11 Q. It's page 139, professor.

12 A. So in between we passed quite a number of  
13 factors.

14 Q. Right. We're going to come -- I'm sorry. We'll  
15 come back to some of those later.

16 A. Okay.

17 Q. And does it state on page 139, "Families in  
18 which parents are considered to be generally  
19 concerned and supportive, or in which the children  
20 are involved in family decisions, are home  
21 environments in which adolescents are less at risk  
22 for smoking initiation?" Does it say that?

23 A. This wasn't considered to be a major conclusion  
24 of this chapter. It's not reflected in -- in Flay  
25 and Hill. It was only supported in 43 percent, less

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1 than half of his studies. We didn't include it in  
2 the chart.

3 To answer Mr. Weber's question, yes, the  
4 sentence is in the Surgeon General's report, but no,  
5 it was not considered to be one of the major risk  
6 factors.

7 Q. So that is in the report is your answer;  
8 correct?

9 A. There are many factors in the report.

10 Q. Now the '94 report also talked about the issue  
11 of peers again; did it not?  
12 A. Could you explain yourself?  
13 Q. Sure. I'm -- I'm sorry, that wasn't a very  
14 clear question.  
15 We mentioned peer patterns earlier from some of  
16 the studies in the early 1970s or later 1970s;  
17 correct?  
18 A. I think I need for you to explain exactly what  
19 you mean by "peer patterns."  
20 Q. Okay. That --  
21 Do you remember a little bit ago when we were  
22 going through that 1979 study, there was a section I  
23 had you read that was labeled "Peer Patterns?"  
24 A. I remember that. I want to know what your  
25 definition is of "peer patterns" before I answer your  
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1 question.  
2 Q. Okay. Now the '94 report said there was a clear  
3 link between peers smoking and cigarette initiation;  
4 did it not?  
5 A. Can you direct me to that?  
6 Q. Yeah. It should be at page 131, professor. And  
7 it would be in the first full paragraph in the  
8 right-hand column. Could you read that sentence that  
9 begins "A positive association...?"  
10 A. "A positive association of peer smoking with  
11 onset of smoking in 88 percent of these more  
12 rigorous, longitudinal studies suggests a clear link  
13 between peers' smoking and cigarette use."  
14 Q. And on the left-hand column where it begins with  
15 "peer Smoking and Peer Behaviors," could you  
16 read -- begin reading that paragraph on the left down  
17 to the Leventhal quote?  
18 A. Well first I'd like to remind the jury --  
19 Q. Professor, --  
20 A. Um --  
21 Q. -- could you --  
22 A. I'll answer your question.  
23 Q. The question was please read that.  
24 A. And do I have to do exactly --  
25 Do I have to do that exactly?

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1 Q. Well I can't tell you what to do, only His Honor  
2 can, but my question is would you please read that  
3 beginning part of that paragraph.  
4 A. Can I have a preface to my reading?  
5 Q. Well I'm --  
6 THE COURT: Professor --  
7 Q. I don't want to get involved --  
8 THE COURT: Professor, maybe you can just  
9 read it for him.  
10 THE WITNESS: Okay.  
11 THE COURT: You'll have a chance, through  
12 your attorneys, to preface and sequelize and do  
13 whatever you choose practically. At this time why  
14 don't you just read it.

15 THE WITNESS: Okay. Can I say something  
16 after I read it?  
17 THE COURT: Well we're trying to do a  
18 question and answer here.  
19 THE WITNESS: Okay. I'm sorry, Your Honor.  
20 THE COURT: Okay.  
21 A. "One of the areas of widest investigation in the  
22 antecedents of cigarette smoking concerns peer  
23 smoking and related peer behaviors. Peers may be  
24 defined as persons of about the same age who feel a  
25 social identification with each other. The influence  
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1 of peers has been positive -- posited as the single  
2 most important factor in determining when and how  
3 cigarettes are first used. Flay et al suggest that  
4 smoking may primarily represent an effort to achieve  
5 social acceptance from peers and that it may be  
6 particularly be a -- and it may particularly be an  
7 experimental 'adult' activity that is shared with the  
8 peer group. Leventhal and Keeshan suggest that  
9 adolescents are not only influenced by, but also  
10 influence and construct, their peer groups."  
11 Q. Okay. Professor, could you read the first  
12 sentence of the next paragraph.  
13 A. "Multiple cross-sectional and longitudinal  
14 studies worldwide substantiate the relationship  
15 between smoking onset and peers' (or friends')  
16 smoking."  
17 Q. And this is another instance where, in the '94  
18 report, you relied on international data; correct?  
19 A. We had plenty of data from America for -- for  
20 this. We were just pointing out that this was --  
21 that this was consonant worldwide. But the Surgeon  
22 General's reports are in fact to deal only with the  
23 United States. We don't -- there's sometimes  
24 comments, small comments about things going on in  
25 other countries, but for the most part we just were  
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1 confined to talking about the United States.  
2 Q. Okay. My question was you relied --  
3 This is another instance in your report where  
4 you relied on international data; correct?  
5 A. I would say we did not rely on it to come to  
6 our -- to our -- to our discussion here.  
7 Q. You've discussed it. Would you at least agree  
8 that when you said "Multiple cross-sectional and  
9 longitudinal studies worldwide substantiate the  
10 relationship between smoking onset and peers' (or  
11 friends') smoking," --  
12 A. Well --  
13 Q. -- would you agree that you at least discussed  
14 the international data there?  
15 A. Well if you remember Conrad, Flay and Hill, nine  
16 of the 27 studies are from other countries, so to the  
17 extent that Conrad, Flay and Hill are -- are sourced  
18 here, those include international studies at well --  
19 as well.

20 I really don't think in this instance we -- we  
21 thought much about the worldwide data. We had enough  
22 data on -- on our own.

23 MR. WEBER: Your Honor, I don't know  
24 whether this might -- I've got more of the list to go  
25 through. Might be a good time for a lunch break.

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1 It's up --

2 Obviously I'm at your pleasure.

3 THE COURT: All right. Maybe you can  
4 restock your paper in the meantime.

5 MR. WEBER: Okay.

6 THE COURT: All right. Let's recess and  
7 reconvene at, oh, about 1:35.

8 THE CLERK: Court stands in recess to  
9 reconvene at 1:35.

10 (Recess taken.)

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1 AFTERNOON SESSION.

2 THE CLERK: All rise. Court is again in  
3 session.

4 (Jury enters the courtroom.)

5 THE CLERK: Please be seated.

6 THE COURT: Counsel.

7 MR. WEBER: Thank you, Your Honor. I  
8 better power up, I guess.

9 Thank you, Your Honor.

10 Good afternoon, ladies and gentlemen.

11 (Collective "Good afternoon.")

12 BY MR. WEBER:

13 Q. Good afternoon, professor.

14 A. Good afternoon, Mr. Weber.

15 Q. Could you turn to your chart at page 123 of the  
16 1994 Surgeon General's report.

17 A. Yes.

18 Q. And that was the chart we'd been discussing  
19 before that listed the psychosocial risk factors for  
20 initiation of tobacco use?

21 A. That's right.

22 Q. Now another one of the risk factors listed on  
23 there is academic achievement; am I correct?

24 A. Yes, it is.



25 Q. And that's a risk factor based on the literature  
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1 review in this report with respect to that group of  
2 students that tend to do not as well in school; am I  
3 correct?

4 A. Yes, it's students who do more poorly in school.  
5 These students are potentially -- are -- are more at  
6 risk for starting to smoke, at least in a number of  
7 studies. And you could understand why they might be  
8 at greater risk and also be more vulnerable to  
9 tobacco industry advertising. As I talked about  
10 yesterday, adolescents are moving from concrete to an  
11 abstract thinking, and those -- you need to be  
12 taught, you need to go through school just like to  
13 learn to read, you need to be given certain teachings  
14 in order to move more quickly from concrete to  
15 abstract. So those who are at lower -- lower  
16 academic achievement may in fact be at greater risk  
17 for messages from the tobacco industry because  
18 they're more concrete thinkers.

19 Q. So that is listed as a risk factor on the chart;  
20 am I correct?

21 A. Yes, it is.

22 Q. Now also listed as a risk factor on the chart,  
23 as a matter of fact the next item, is "Other problem  
24 behaviors;" correct?

25 A. Yes. That's other problem behaviors that occur  
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1 during -- during adolescence.

2 Q. And would that include a tendency for  
3 risk-taking behavior, or would that be a separate  
4 listed item?

5 A. I believe in this chart it means -- it doesn't  
6 mean a tendency towards risk-taking behavior but  
7 actual involvement in risk-taking behaviors, such as  
8 alcohol use or other drug use. And -- and in fact  
9 cigarette smoking is generally one of the first of  
10 these problem behaviors to occur during adolescence.

11 Q. Now are you familiar with the University of  
12 Michigan Monitoring the Future studies?

13 A. I know about them, yes.

14 Q. And indeed, you -- you referred to some of them  
15 yesterday; did you not?

16 A. Yes, I did.

17 Q. Could you turn to tab 19, and that's -- I'm  
18 sorry, that would be Exhibit AM000596. Do you have  
19 that, professor?

20 A. Yes, I do.

21 Q. And is that the Monitoring the Future study from  
22 December 20, 1997, with a related press release?

23 A. Yes. It looks like it's from Monitoring the  
24 Future web site.

25 Q. And again, this is data that you rely on on your  
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1 analysis of teen smoking rates and issues of that  
2 type; correct?  
3 A. In part we rely on the data from Monitoring the  
4 Future. I don't believe I reported anything from the  
5 1997 data set since that just was released late in  
6 December of 1997.

7 MR. WEBER: Your Honor, I'd move the  
8 admission of this study as a learned treatise and a  
9 matter on which the professor relies.

10 MS. WALBURN: No objection.

11 MR. WEBER: It's -- I'm sorry. Did I -- do  
12 you need the number?

13 THE COURT: No.

14 MR. WEBER: Okay.

15 THE COURT: The court will receive  
16 AM000596.

17 BY MR. WEBER:

18 Q. And could you turn to Table 1, which is the  
19 cigarette use table there, professor?

20 A. Do you have a page?

21 Q. I think it's the sixth page in by my count. See  
22 if that gets you to Table 1, which is labeled  
23 "Cigarettes."

24 A. Yes.

25 Q. Okay. I'd like to go through a few of these

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1 numbers over a period of time for you -- or with you.  
2 I guess I wish I had a better copy, but --

3 I want to start over here on the left. What  
4 this study does is it reports on lifetime smoking  
5 rates among eighth, 10th, 12th graders, although for  
6 most of the time it only has rates for 12th graders;  
7 correct?

8 A. Yes. It began the surveys of eighth and 10th  
9 graders in 1991.

10 Q. And lifetime rates are ever smoker rates,  
11 anybody who's ever had a puff of a cigarette or more;  
12 correct?

13 A. I'm not a hundred percent sure of their  
14 definition, so I'll --

15 Q. That's usually the definition for lifetime;  
16 isn't it?

17 A. Sometimes it's have you smoked a whole  
18 cigarette, but --

19 Q. And then the next column they have is what's  
20 called the 30-day prevalence rate, and that means  
21 anyone who's had a cigarette in the last 30 days;  
22 correct?

23 A. Yes, it is.

24 Q. Then they have a daily rate, that's anybody  
25 who's had one or more cigarettes a day; correct?

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1 A. Yes, it is.

2 Q. And then the last column is one-half pack or  
3 more a day; correct?

4 A. Yes.

5 Q. All right. Now what I wanted to do is start

6 with 1976 and note that the ever smoking rate was  
7 75.4 percent; correct?  
8 A. That's right.  
9 Q. For 12th graders.  
10 A. That's right.  
11 Q. The ever smoking rate for -- or strike that.  
12 The 30-day rate, anybody who had a cigarette in  
13 the last 30 days, is 38.8 percent for 12th graders.  
14 A. That's right.  
15 Q. The daily rate is 28.8 percent; correct?  
16 A. Yes.  
17 Q. And the one-half pack or more rate is 19.2  
18 percent; correct?  
19 A. Yes.  
20 Q. Now what I'd like to do is move over to 1992,  
21 and you see where they've got that data? Are you  
22 with me, professor?  
23 A. Yes, I am.  
24 Q. I'm having a hard time because I'm behind this  
25 chart, but I can hear you.

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1 Now in 1992 the 12th grade ever smoking rate was  
2 61 percent; correct, 61.8?  
3 A. Yes, that's right.  
4 Q. And from 19 --  
5 If you go back to the 1976 line for lifetime  
6 ever smokers, to the 1992 rate, you see that the ever  
7 smoking rate for high school 12th graders has  
8 dropped, if you'll trust my math, 18 percent, from  
9 75.4 percent to 61.8 percent; correct?  
10 A. Well as I said yesterday, the rate dropped and  
11 was pretty -- went constant throughout the '80s until  
12 about 1992 when it began going up again. So there  
13 was a drop in the '70s, but as a scientist I believe  
14 those changes in the '80s were not for the most part  
15 statistically significant. And then up. So I think  
16 that's consistent with what --  
17 Although I was reporting on 30-day current  
18 smoking yesterday.  
19 Q. Well -- and I'm going to ask you some questions  
20 about that in a little bit, and indeed the reason I  
21 chose '92 was because you referenced it yesterday.  
22 But would you accept my math that from 1976 to 1992,  
23 for the lifetime ever smokers, seniors, that rate  
24 dropped 18 percent over that period of time?  
25 A. Except that it went down in the '70s, leveled

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1 off in the '80s to 1992, and that was about what --  
2 what you said, 18 percent.  
3 Q. Okay. Now let's move down to that 30-day  
4 prevalence rate, and that went from 75.4 percent --  
5 excuse me, I'm sorry -- from 38.8 percent, anybody  
6 who had one cigarette in the last 30 days, to 27.8  
7 percent; correct, for high school seniors?  
8 A. Yes, that's the current smoking rate.  
9 Q. And that's a 28 percent drop, if you accept my  
10 math.

11 A. I got a 10 percent drop.  
12 Q. I'm talking about if you compare the 38 --  
13 A. To the --  
14 Q. -- to the 27; that is, if you take a hundred  
15 percent of the rate in 1976, --  
16 A. Then it's 11 --  
17 Q. -- that dropped 28 percent over that period of  
18 time.  
19 A. It's 11 percent. It went from 38 to 27.  
20 Q. Right. But what I'm --  
21 A. Oh, and then you're dividing it.  
22 Q. Here's -- here's my calculation. If you take  
23 the 1976 rate as 38.8 percent for anybody who had a  
24 cigarette in the last 30 days, and you bring that  
25 forward to 1992 where that rate is 27.8 percent, that

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1 means that of this number, that reduced itself over  
2 this period of time by 28 percent. Follow me? And  
3 you'd do that by dividing the 38.8 into the 27.8.  
4 A. No.  
5 Q. I mean it's an absolute drop of eleven percent,  
6 but I'm talking about --  
7 A. Right. So the drop -- the drop is calculated as  
8 eleven --  
9 If you were going to say what percent drop, you  
10 would say eleven percent over the 38.8 percent, which  
11 is about a 20 percent drop. I -- I'm not quite -- I  
12 mean your math is quite odd --  
13 Q. Well --  
14 A. -- to me.  
15 Q. -- what I'm trying to do, and if you've got a --  
16 you can help me here.  
17 A. Yeah. I think we can say there was an 11  
18 percent drop.  
19 Q. Well what I'm trying to do is also evaluate it  
20 the other way, saying if I take the rate of 38.8  
21 percent -- all right?  
22 A. Uh-huh.  
23 Q. And that's the rate right there.  
24 A. Right.  
25 Q. What percentage reduction of this is there to

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1 get to 20 -- to get to a line that would be 27.8  
2 percent. And of the 38.8 percent, --  
3 A. Right.  
4 Q. -- that reduction would not -- would be 28  
5 percent of what this total was; isn't that correct?  
6 A. Okay. You took eleven and put it over 38.  
7 Q. Okay.  
8 A. That's what you --  
9 Yeah. Okay.  
10 Q. Okay.  
11 A. Eleven over 38.  
12 Q. Yes.  
13 A. And if someone could calculate --  
14 Q. Is that right?  
15 A. Okay.

16 Q. Now if you look at the --  
17 A. But I'd like to point out that the -- most of  
18 that drop, again, as I talked about the trend  
19 yesterday, the drop went from 38.8 all the way down  
20 to 30 by 1982, so the -- again in the '80s it was --  
21 it was pretty flat.  
22 Q. Okay. And if we look at the daily rate,  
23 professor, anyone who smokes a cigarette a day, that  
24 was 28.8 in '76 and 17.2 in 1992; correct?  
25 A. Yes.

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1 Q. And if we perform the same calculation, that  
2 would be an approximately 40 percent reduction from  
3 the rate in 1976; correct?  
4 A. Well you're subtracting, putting eleven over 28,  
5 so it's eleven of 28. Is that correct?  
6 Q. I checked it on a calculator, but if I'm wrong,  
7 I'm wrong. I'm sure His Honor will strike it.  
8 If you'd look at the half pack a day --  
9 THE COURT: Well I do strike your checking  
10 it on a calculator.  
11 Q. Could you check the half pack a day. It was  
12 19.2 in '76 and down to 10 percent in 1992; correct?  
13 A. Yes.  
14 Q. And that's approximately a 48 percent reduction  
15 from the rate in 1992.  
16 A. All right.  
17 Q. Now let's look from -- I'd like now to focus on  
18 that 30-day -- well strike that, professor.  
19 That period from 1976 through 1992 was a period  
20 when advertising and promotional expense increased  
21 substantially; correct, in the cigarette industry?  
22 A. I believe it started to increase in the '80s, if  
23 my memory serves me correctly, and then accelerated  
24 in the late '80s and particularly in the '90s, and  
25 then we only had information up through 1994.

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1 Q. Do you know whether or not there was a steady  
2 increase over this period '76 through '92?  
3 A. I believe there was a steady increase during the  
4 '80s, so close enough.  
5 Q. And in that period of time, from the lightest  
6 rate of use to the more heavy rate of use, there was  
7 a percentage drop in each category for the 12th  
8 graders; correct? Eighteen percent, 28 percent, 40  
9 and 48.  
10 A. Yes, I would hope so, because this was a time of  
11 quite intense anti-smoking activity, so it's not just  
12 the increase in advertising and promotion that might  
13 be related to adolescent smoking, but it was also  
14 what else was going on, which included anti-smoking  
15 activities.  
16 Q. And let's look --  
17 You mentioned '92 yesterday. Let's look at the  
18 period right -- the four years after '92, from '92  
19 through '96, and you'll see again that 61.8 rate for  
20 ever smokers, anybody who ever had a cigarette, among

21 seniors, increased slightly over that four-year  
22 period; correct?  
23 A. If I remember, that's a statistically  
24 significant increase.  
25 Q. All right. And then the 30-day rate; that is,  
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1 anyone who had a cigarette in the last 30 days, that  
2 increased from 27.8 in '92 to 34 percent in '96;  
3 correct?  
4 A. Yes. I believe that's about a 20 percent or  
5 more increase.  
6 Q. Well I got it at 22 percent. Will you accept  
7 that, professor, a 22 percent --  
8 A. You have the -- you have the calculator.  
9 Q. Okay. Then on the daily cigarette rate, that  
10 increased from 17 percent to 22 percent; correct?  
11 A. Yes.  
12 Q. And the half pack a day increased from 10 to 13  
13 percent; correct?  
14 A. Yes, it did.  
15 Q. Now I'd like you to turn --  
16 A. But before we leave this, can I point something  
17 out in this data?  
18 Q. I'm sorry, professor. Your counsel, I think,  
19 will have a chance to fill in for you later. Right  
20 now --  
21 A. Oh, I thought --  
22 Q. Okay?  
23 A. You said "is that all right," and I was trying  
24 to respond to that.  
25 Q. Now --

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1 THE COURT: You may respond to "is that all  
2 right." Let her respond to your question, --  
3 MR. WEBER: All right.  
4 THE COURT: -- counsel.  
5 A. I just wanted to point out to the jury that you  
6 can see what -- why is the -- why we were concerned  
7 about this data weren't these calculations, but that  
8 you could see there was, you know, pretty -- we  
9 didn't see any increases, this is the '80s, we didn't  
10 see any increases in smoking until we -- we got to  
11 about 1992, then we started seeing increases in  
12 smoking. This same -- that is why people were  
13 concerned with the nine -- with the 1990s.  
14 Q. Now could you turn farther back into that same  
15 study to what is, I think, labeled Table 1B,  
16 professor.  
17 A. Do you know how many pages more it is?  
18 Q. How far --  
19 A. In what --  
20 Q. Excuse me just a second. How far behind the  
21 first one is the other one?  
22 It's about 20 pages in.  
23 MR. WEBER: May I approach, Your Honor?  
24 Okay. Do you have it?  
25 THE WITNESS: I don't really know what

1 you're talking about.  
2 MR. WEBER: Let me see if I can find it for  
3 you. Watch your water there.  
4 We're at tab 19, Table 1B. Okay?  
5 THE WITNESS: Yes.  
6 Q. Now Table 1B deals with, among other things,  
7 30-day prevalence for use of various drugs; does it  
8 not?  
9 MS. WALBURN: Objection, outside the scope,  
10 and relevance.  
11 THE COURT: Does this relate to smoking?  
12 MR. WEBER: It relates to what was going on  
13 with teen-agers from 1992 to 1996 in the  
14 multi-factorial issue and the risk-taking that the  
15 professor has testified to, Your Honor. It  
16 explicitly addresses those issues.  
17 THE COURT: Well I'll see where you're  
18 going here. We are not trying to try teen-age drug  
19 use in general in this case.  
20 MR. WEBER: No. And all I want to do is  
21 show that there were increases going on in risky  
22 behavior with teen-agers on these factors.  
23 THE COURT: Okay.  
24 MR. WEBER: Thank you, Your Honor.  
25 BY MR. WEBER:

1 Q. Now the -- let's compare the 30-day prevalence  
2 rate, which is on the right side of that column, for  
3 any illicit drug use for 12th graders, and go from  
4 1992 to 1996, and that moved from 14.4 percent to  
5 24.6 percent. Do you see that, professor?  
6 A. Yes, I do.  
7 Q. And that's approximately a 70 percent increase;  
8 is it not?  
9 A. Yes, it is.  
10 Q. And in 10th grade, ever use -- or 30-day --  
11 30-day prevalence of any drug, that goes from eleven  
12 to 23 percent. That's more than a hundred percent;  
13 correct?  
14 A. Yes, that's true.  
15 Q. And eighth grade numbers go from 6.8 to 14.6,  
16 that's over a hundred percent; correct?  
17 A. Yes, that's true.  
18 Q. And you also see increases below in each age  
19 group for any drug other than marijuana as well;  
20 correct?  
21 A. Yes.  
22 Q. Now these percentage increases among the 12th  
23 graders -- and let's focus on them because they were  
24 the ones we were looking at in the cigarette  
25 prevalence 30-day rates. All right? These

1 percentage increases among the high school seniors on

2 30-day prevalence were greater with respect to any  
3 drug use than they were with respect to the increases  
4 regarding smoking; were they not?

5 MS. WALBURN: Objection, relevance, beyond  
6 the scope.

7 THE COURT: You may answer that.

8 A. The absolute increases -- you're doing relative.  
9 The absolute increases I don't believe were -- were  
10 any larger. We could -- I think I've charted this  
11 out and they're -- they're similar.

12 I would like to point out to the jury, however,  
13 that all of these illicit drugs, the use of these  
14 illicit drugs occurs after cigarette smoking; that  
15 is, a person very rarely, very rarely uses any of  
16 these illicit drugs, including marijuana, prior to  
17 smoking a cigarette. Cigarette smoking is in fact  
18 considered a risk factor for all of these illicit  
19 drugs and occurs later in time. So if the average  
20 age, as we saw the average age of onset is about 14  
21 years old for cigarette smoking, the average age of  
22 the first illicit drug, marijuana, use is about two  
23 years later. In addition, the other licit drug,  
24 alcohol use -- which of course isn't licit at this  
25 age group because the legal age for alcohol use was

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1 21 years old -- that was flat. There was no increase  
2 in alcohol use during this period.

3 So cigarette smoking is a risk factor for these  
4 illicit drugs. This doesn't -- isn't saying it  
5 caused this increase, but it was certainly related to  
6 and temporally was associated in time with these --  
7 with these increases, whereas alcohol use among  
8 adolescents stayed relatively flat throughout the  
9 '90s.

10 Q. So -- and --

11 And if I heard you correctly, you're not saying  
12 that cigarette use caused this drug use.

13 A. I said that cigarette smoking is a risk factor,  
14 a risk factor for illicit drug use. That means use  
15 of cigarettes is a predictor of use of drugs later.  
16 It's a predictor.

17 Q. And the '94 Surgeon General's report noted that,  
18 at least with respect to alcohol, that the fact that  
19 under-age may use cigarettes and alcohol  
20 impermissibly doesn't establish cause -- a causal  
21 relationship between smoking and alcohol abuse;  
22 correct?

23 A. Smoking and alcohol use onset occur at about the  
24 same time, some studies have shown, and -- and in the  
25 Surgeon General's report we -- we looked at it, and

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1 alcohol -- and cigarette use occurs slightly before  
2 alcohol use, but those are occurring right at about  
3 the same time.

4 I think the point between cigarette use and  
5 alcohol use, obviously these are both important  
6 problems in adolescents and -- but the problem of



7 alcohol use really isn't a problem for the vast  
8 majority of users after the late teens. It's  
9 primarily a problem during adolescence, whereas  
10 cigarette smoking continues to be a problem, a health  
11 problem long into adulthood.

12 Q. Now at least it's clear that there was something  
13 going on with respect to youth from '92 to '96 and  
14 the risky behavior they were engaging in that didn't  
15 relate to tobacco advertising; correct?

16 A. I don't agree with that.

17 Q. So is it your --

18 Would it be your position that these increases  
19 on the 30-day prevalence with any use of drugs,  
20 increases that are greater than the percentage  
21 increases for smoking in that period, is it your  
22 position that this 30-day prevalence increase for use  
23 of drugs is related and caused by cigarette  
24 advertising?

25 MS. WALBURN: Objection to form and  
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1 relevance.

2 THE COURT: No, you may answer.

3 A. Well you said a lot of things there that I  
4 didn't quite agree with. One was that 30 percent  
5 where I think it's about an absolute number --

6 I haven't analyzed why there's been an increase  
7 in marijuana use in the 1990s. I have looked at why,  
8 in part, there's been an increase in cigarette use in  
9 the 1990s, and my opinion, which I stated yesterday,  
10 was that cigarette advertising and promotion  
11 substantially contributed to this increase.

12 Q. And my question, professor, was you're not --  
13 strike that.

14 My question was there must be something else  
15 going on with the people in these age groups from '92  
16 to '96 because they're increasing their 30-day  
17 prevalence rates for various drug use, and cigarette  
18 advertising isn't advertising activity at that type;  
19 correct?

20 MS. WALBURN: Objection, asked and  
21 answered.

22 THE COURT: No, you may answer that.

23 A. I haven't analyzed what caused this increase in  
24 marijuana use. I do know that cigarette smoking is a  
25 risk factor for marijuana use, so it's plausible that

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1 there could be a chain of events, cigarette  
2 advertising and promotion causing cigarette smoking  
3 which in turn is a risk factor for marijuana use.  
4 But I really haven't analyzed why there's been an  
5 increase in marijuana use, and I'm not ruling out  
6 this chain of events, but I'm -- you know, I haven't  
7 studied that.

8 Q. Marijuana use wasn't advertised over this  
9 period; was it, '92 to '96?

10 MS. WALBURN: Objection, relevance.

11 THE COURT: It's -- well, it's a little

12 argumentative.  
13 Q. Isn't it just as plausible that there were other  
14 factors in society affecting the risk-taking  
15 viewpoints of adolescents during this period of time  
16 that caused them to undertake a variety of risky  
17 behaviors?

18 MS. WALBURN: Objection, form at this  
19 point, calls for speculation.

20 THE COURT: Well you may answer if you  
21 know.

22 A. I haven't studied why the adolescents increased  
23 their marijuana use during the 1990s.

24 Q. Could you turn to tab 20, professor. It's  
25 Exhibit AB000290. Do you have that?

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1 A. Yes, I do.

2 Q. And do you recognize that as a youth risk  
3 behavior surveillance survey by the Centers for  
4 Disease Control?

5 A. Yes, I do.

6 Q. And you've relied on these in your own work and  
7 indeed in the '94 report as well, youth risk behavior  
8 surveys out of the CDC; right?

9 A. Yes. We rely on them to some extent.

10 MR. WEBER: Your Honor, I'd move the  
11 admission at this time of Exhibit AB000290 as a  
12 government report.

13 MS. WALBURN: No objection.

14 THE COURT: Court will receive AB000290.

15 BY MR. WEBER:

16 Q. Now professor -- professor, this is the most  
17 recent youth risk behavior surveillance study from  
18 the Centers for Disease Control; is it not?

19 A. I can't attest to that. I thought that they did  
20 it annually. I was just involved in some of the  
21 editing for this, the 1998 survey, so I can't attest  
22 that this is the latest of the surveys.

23 Q. As you sit here, you don't know of a more recent  
24 one; do you?

25 A. I can't attest to there's a more recent one.

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1 Q. Now --

2 And again, the purpose of this survey from the  
3 Centers for Disease Control is -- is to take a  
4 national survey of youth and determine what's going  
5 on in terms of risky behavior; correct?

6 A. It's a survey to look at health -- health  
7 behaviors generally. It can be health-enhancing  
8 behaviors as well as health-compromising behaviors.

9 Q. And one of the things they look at in -- in that  
10 survey is cigarette usage; correct?

11 A. Yes, they do.

12 Q. Along with drug usage and a number of other  
13 factors; correct?

14 A. Yes.

15 Q. Would you turn to tab 21. I'm sorry, that's  
16 Exhibit 1989, X1989. That's a demonstrative. And

17 professor, would you go through with me, I hope -- I  
18 may have to move something around -- and what I'd  
19 like to do is show how the statistics on this bar  
20 graph come from the CDC report. Do you understand  
21 what I'm going to be asking you?

22 A. Yes. So you want me to check back and forth.

23 Q. Right. I want to make sure that you agree the  
24 numbers are right.

25 MR. WEBER: Your Honor, could I move the  
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1 admission of Exhibit X1989 conditionally on tying up  
2 the numbers from the report in the exhibit we just  
3 admitted? It might make it easier.

4 THE COURT: Well --

5 MS. WALBURN: Objection. This is  
6 demonstrative that was not prepared by this witness.  
7 And also object to the relevancy of this exhibit in  
8 that it deals with factors beyond cigarette smoking.

9 MR. WEBER: We've used demonstratives with  
10 other -- I mean they've used some of our  
11 demonstrative exhibits with ours, and all this does  
12 is --

13 THE COURT: This isn't --

14 Is this the plaintiffs' demonstrative?

15 MR. WEBER: No, this is ours.

16 THE COURT: This is your demonstrative that  
17 you want to introduce through this witness. That's  
18 kind of unusual, counsel.

19 MR. WEBER: Right. That's -- that's why I  
20 want to take -- go through and just confirm the data,  
21 which I can do in about five questions, --

22 THE COURT: Okay.

23 MR. WEBER: -- out of the exhibit we've  
24 just admitted. It's purely from the admitted  
25 exhibit, Your Honor.

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1 THE COURT: So you want her to create your  
2 demonstrative exhibit; right?

3 MR. WEBER: I don't want her to create it,  
4 but indeed --

5 THE COURT: Well how will you get it in,  
6 then?

7 MR. WEBER: With one of our witnesses they  
8 used a demonstrative.

9 THE COURT: Of yours.

10 MR. WEBER: Of -- of ours.

11 THE COURT: That's why I asked. Is this  
12 one of theirs that you're using with this?

13 MR. WEBER: It's --

14 THE COURT: It doesn't work that way.

15 MR. WEBER: Okay.

16 THE COURT: I don't --

17 You can ask the numbers, but I don't think it's  
18 fair to use your demonstrative exhibit when she  
19 hasn't prepared it. I don't think that's proper  
20 procedure.

21 MR. WEBER: Okay. Would it -- would -- I'm

22 sorry.  
23 THE COURT: But -- go ahead.  
24 MR. WEBER: Would it matter if this was one  
25 of the predesignated ones. I don't know if she  
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1 reviewed it or --  
2 THE COURT: Well you can ask her if she can  
3 attest that this is -- this is correct, then I don't  
4 have any problem with that. If she can't, then --  
5 then maybe you'll have to wait until you get your  
6 witness on.  
7 MR. WEBER: Okay.  
8 THE COURT: Okay.  
9 BY MR. WEBER:  
10 Q. Professor, did you check the statistics on this  
11 demonstrative that was predesignated for your  
12 testimony against the CDC report?  
13 A. No, I didn't.  
14 Q. Okay. Let me --  
15 A. I did look at this demonstrative, but I didn't  
16 go back and forth.  
17 Q. Let me do this then. Would you -- just to make  
18 it easier for you, professor, you can put the binder  
19 with the demonstrative exhibit away, and what I'll do  
20 is go through the exhibit from the CDC on youth risk  
21 behavior that was just admitted. And I've lost my  
22 cover sheet with the exhibit number.  
23 MR. CIRESI: AM000596.  
24 MR. WEBER: No, I'm sorry, it's A -- this  
25 is the AB one.

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1 MR. CIRESI: AB000290.  
2 MR. WEBER: Right. Just for the record,  
3 okay?  
4 BY MR. WEBER:  
5 Q. Now professor, could you turn to what's marked  
6 as page five, and do you see the statistics for  
7 riding with a driver who had been drinking alcohol?  
8 A. Yes, I do.  
9 Q. And that says the 30-day prevalence rate; that  
10 is to say, within the 30 days before the survey, they  
11 give a statistic here of students nationwide who had  
12 ridden with a driver who had been drinking; correct?  
13 A. Yes, they do.  
14 Q. And that statistic is 38.8 percent?  
15 A. Yes, it is.  
16 Q. And on page -- that same page, if you move down  
17 a little, in the 30 days before the survey, 15.4  
18 percent of students nationwide had driven a vehicle  
19 after drinking; correct?  
20 A. Yes, that's true. Or at least that's what's  
21 reported here.  
22 Q. If you go to page six, professor, right under  
23 carrying a weapon, this federal data reports that 20  
24 percent of students nationwide had carried a weapon,  
25 a gun, knife or club, within the 30 days before the

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1 survey; correct?  
2 A. Yes, that's what the document says.  
3 Q. And so far these are all 30-day prevalence  
4 rates; correct?  
5 A. Yes, they are.  
6 Q. And let's go to page 10 -- well strike that.  
7 Let's go to page eleven. And that says that, if  
8 you go down to the second paragraph under "Alcohol  
9 Use," professor, --  
10 A. Yes.  
11 Q. -- that says 51.6 percent of all students have  
12 had at least one drink of alcohol in the prior 30  
13 days; correct?  
14 A. Yes, that's -- that's true.  
15 Q. And then it goes on to break that data down  
16 more. And if you look at the first sentence of that  
17 paragraph at the bottom --  
18 See that?  
19 A. Yes.  
20 Q. -- that says nationwide 32.6 of all students had  
21 had five or more drinks on one occasion in the prior  
22 30 days; correct?  
23 A. Correct.  
24 Q. And those two were also 30-day prevalence rate  
25 numbers; correct?

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1 A. Yes, they were. And they're also for -- these  
2 are for high school students, not young adolescents.  
3 Q. Now if you'd go to page 17, please --  
4 I'm sorry. Why don't you just flip over to the  
5 next page, page 12; we might as well catch that while  
6 we're there. And that reports that 25.3 percent of  
7 students had used marijuana during the past 30 days;  
8 correct?  
9 A. Yes, that's correct, as reported here.  
10 Q. I didn't plan that chart very well, but I hope  
11 it's clear.  
12 And then there's another statistic on marijuana  
13 use, if you go to page 16, and if you'd look at the  
14 second full paragraph that begins "Nationwide 8.8  
15 percent...."  
16 A. Uh-huh.  
17 Q. That says 8.8 percent of all students had used  
18 marijuana on school property during the preceding 30  
19 days; correct?  
20 A. That's what it says.  
21 Q. And both those marijuana numbers were also  
22 30-day prevalence numbers; correct?  
23 A. Yes.  
24 Q. Now if you turn to page 17, please -- and this  
25 is not a 30-day rate, this is a three-month

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1 rate -- but if you'll see in that first line down at  
2 the bottom of the page, that reports that 37.9

3 percent of students nationwide had had sexual  
4 intercourse during the three months preceding the  
5 survey; correct?  
6 MS. WALBURN: Objection to the continuing  
7 line of questions on relevance, Your Honor.  
8 MR. WEBER: I'm almost done.  
9 THE COURT: You may answer.  
10 A. Yes, that's what this says.  
11 Q. And if you could turn to, then, page -- turn  
12 back to page 10, if you would, please. Now the  
13 30-day prevalence rate for smoking is given on -- is  
14 given on page 10, correct, at the start of that first  
15 full paragraph?  
16 A. Yes, it is.  
17 Q. And the 30-day prevalence rate for smoking is  
18 34.8 percent?  
19 A. Yes, it is.  
20 Q. And that's one cigarette in the last 30 days  
21 would qualify you for that category.  
22 A. No. That says smoked --  
23 Oh, greater than one cigarette per day.  
24 Q. Right?  
25 A. Yeah, that's right.

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1 Q. And for those who smoked cigarettes, what the  
2 Centers for Disease Control called frequent use, that  
3 would be smoking cigarettes on 20 or more of the days  
4 during the month?  
5 A. Yes.  
6 Q. So that's -- that's a greater frequency of use  
7 than just once or more in the last month; correct?  
8 A. Yes, it's 20 or more days per month.  
9 Q. Right. So for those who had more frequency and  
10 smoked on 20 or more days, that was 16.1 percent;  
11 correct?  
12 A. Yes.  
13 Q. Now again, according to the data from Centers  
14 for Disease Control, which you've used in your own  
15 work, and -- and I apologize for how overlapping all  
16 this is, but -- but I think the numbers are right,  
17 obviously there's a number of risk behaviors engaged  
18 in by high school students that aren't related to  
19 advertising; correct?  
20 A. These are data from ninth through 12th graders.  
21 They show a number of very -- of health-compromising  
22 behaviors, a number of them. Except for alcohol use,  
23 all these behaviors start after cigarette smoking,  
24 and cigarette smoking is a risk factor or related to  
25 all of these behaviors.

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1 All of these are very important behaviors for  
2 teen-agers, for our -- our teen-agers and are of  
3 concern to us. Only one of those behaviors, though,  
4 is of great concern into adulthood, in only one of  
5 those behaviors does one out of three who use it  
6 currently will die prematurely from it, and that's  
7 cigarette smoking. So when we talk about risk, these

8 behaviors have short-term risks and they're really  
9 important that we deal with them during adolescence,  
10 but one out of three teen-age smokers that are  
11 regular smokers will die prematurely from their  
12 smoking. That's the biggest risk. It is much more  
13 risk in terms of number of lives lost than all of  
14 these behaviors.

15 So yes, these are a concern for me, and in  
16 particular all of these are concerns during  
17 adolescence. After adolescence, these are of very  
18 little concern, people grow out of them, except  
19 cigarette smoking.

20 MR. WEBER: Your Honor, I'd move to strike  
21 that portion of the answer that was medical-oriented  
22 testimony on the basis that it's beyond the witness's  
23 expertise, not being a physician.

24 MS. WALBURN: This witness --

25 MR. WEBER: That wasn't designated for her.

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1 MS. WALBURN: This witness was the senior  
2 scientific editor of the 1994 Surgeon General's  
3 report that dealt with those issues, and counsel  
4 opened the door with the questions on comparative  
5 behavior.

6 THE COURT: I think you did open the door,  
7 counsel. I'm going to let it stand for that reason.  
8 BY MR. WEBER:

9 Q. Professor, let me ask the question -- let me  
10 just ask you the question again which I just asked  
11 you, which was: Obviously there's a number of risk  
12 behaviors engaged in by high school students that  
13 aren't related to advertising; right?

14 A. You know, Mr. Weber, I don't know how these  
15 other behaviors are related to advertising because I  
16 haven't studied them. I believe alcohol use could be  
17 related to advertising, but I really haven't studied  
18 that in depth. I have studied cigarette smoking and  
19 I have studied cigarette advertising and promotion,  
20 and my opinion is that it influences teen behavior.

21 Now there's other behaviors I haven't studied in  
22 terms of the relationship between advertising and  
23 these behaviors, and there could be a linkage, but I  
24 don't know.

25 Q. You're not saying that cigarette advertising

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1 causes youth to carry guns to school; does it -- are  
2 you?

3 A. You asked me the relationship -- I believe,  
4 unless I heard you wrong -- between advertising in  
5 general and these behaviors, not cigarette  
6 advertising and these behaviors, but advertising and  
7 these behaviors, and I think I answered that  
8 question.

9 Q. Well I'm -- I'm asking a different question now.  
10 I'm trying to narrow it down. Are you saying that  
11 cigarette advertising causes youth or has -- strike  
12 that.

13 Are you saying that cigarette advertising causes  
14 youth to carry guns to school?

15 MS. WALBURN: Objection, relevance.

16 THE COURT: Well you may answer.

17 A. I said this before: Cigarette advertising and  
18 promotion is a cause of youth smoking. Youth smoking  
19 is associated with these other behaviors. It's  
20 certainly predictive of marijuana use. There could  
21 be a chain of -- of events there, but right now  
22 there's no evidence on that. I'm not going to rule  
23 it out.

24 Q. So youth smoking could cause high school  
25 students to carry weapons to school. You can't rule

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1 that out.

2 MS. WALBURN: Objection, asked and  
3 answered, and misstates the testimony.

4 THE COURT: Well you can answer it again if  
5 you'd like.

6 A. I really haven't studied gun-carrying.

7 Q. How about riding with drinking drivers in the  
8 last 30 days, has cigarette advertising caused that?  
9 Can you rule it out there?

10 A. I can't rule it out, because riding with a  
11 drinking driver is a peer behavior, and that could be  
12 targeted. It could be targeted in terms of the peer  
13 group just as we showed yesterday that cigarette  
14 advertising and promotions target the peer group and  
15 drinking and driving tends to occur in the peer  
16 group, so I can't really rule that out.

17 Q. How about having five or more drinks on one  
18 occasion in the last 30 days, can -- can you rule out  
19 cigarette advertising as a cause of that?

20 A. You know, I haven't studied that. I'd really  
21 like not to give an opinion on that.

22 Q. You're just not sure on that one way or the  
23 other.

24 A. I haven't studied it, and so I -- I'd prefer not  
25 to give an opinion on that.

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1 Q. How about for the 38 percent of high school  
2 students who reported having sexual relations in the  
3 last three months, can you rule out cigarette  
4 advertising as being a cause of that?

5 MS. WALBURN: Objection, relevance.

6 THE COURT: Maybe we're getting in the area  
7 of argumentative on that question, I think, counsel.

8 Q. Now there's another area of research relating to  
9 the reasons why people in general or the under-age in  
10 particular smoke, and that's research that involves  
11 asking people questions about why they smoke; right?

12 A. That's not a different area of research, it's  
13 part of some survey work, and it's -- it's pretty  
14 rudimentary, doesn't usually take into account larger  
15 social environmental factors. It's not considered  
16 very current kind of research. It's not.

17 Q. Historically, you've done some studies where you



18 asked people why they smoke; correct?  
19 A. Historically I've asked students themselves, or  
20 I've heard students because that's part of our  
21 smoking prevention program. That doesn't mean that  
22 students, though, give me the answers that actually  
23 regulate their behavior.  
24 Q. Well they give you the best answers they can  
25 give you; right?

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1 A. Well they give me answers that have to do with  
2 that part of the inner ring, because that's all they  
3 can see. They're very concrete, what they can touch,  
4 see, feel. They really rarely talk about the larger  
5 social environment.  
6 Q. I noticed you coughed a couple times. Do you  
7 want to take a minute and get some water, or -- I  
8 don't mean to wear your voice out. Are you okay?  
9 A. I think I'm -- I'm fine.  
10 Q. Okay. Could you take a look at tab one,  
11 professor. It's AM003036. And is that an article  
12 you were one of the co-authors of in 1980?  
13 A. Yes, it is.  
14 Q. And that --  
15 It was published in Volume 15 of Adolescence?  
16 A. Yes, it was.  
17 Q. And I just wanted to ask whether it refreshes  
18 your recollection. Did you not state in this article  
19 that peer pressure is the influence most often  
20 identified by students as the important factor in  
21 their decision to smoke?  
22 A. Can you direct me to that, counsel?  
23 Q. I'm sorry. It's at the end -- the last sentence  
24 at the end of the second paragraph.  
25 A. Oh. Yes, I -- I -- (clearing throat) excuse me.

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1 Just a second.  
2 Yes, this was a report of our first study that I  
3 spoke about on Friday afternoon, and this is a  
4 sentence from that, that peer pressure is the  
5 influence most often identified by students as the  
6 important factor in their decision to smoke. This  
7 was, of course, in the context of our smoking  
8 prevention program which, at that time, included a  
9 large emphasis on resisting influences from  
10 advertising, because we thought advertising was a  
11 factor in youth smoking.  
12 Q. So at least at that time you cited some research  
13 that relied upon responses from students; correct?  
14 A. I was just saying here that that's what students  
15 say, that was among -- among the research, and of  
16 course this is a pretty early article.  
17 Q. Now the Gallup polling organization conducts  
18 polls nationally in which they ask questions on a  
19 wide variety of issues; right?  
20 A. Yes, they do.  
21 Q. And they occasionally do surveys that are  
22 focused on cigarette use; do they not?

23 A. Yes, they do.  
24 Q. And indeed, you and the Surgeon General's report  
25 in 1994 cited a number of Gallup polls with respect  
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1 to information on smoking use; didn't you?  
2 A. Yes, I believe we reported a Gallup poll in  
3 which 50 percent of teen-age smokers owned a  
4 promotional item and 25 percent of teen-age  
5 non-smokers owned a promotional item. So it was the  
6 teen-age self-report of what they actually owned, so  
7 yes.  
8 Q. Could you turn to tab two, which is AM002049,  
9 and can you identify that as a Gallup poll from  
10 December 1, 1991?  
11 A. Yes, this is a Gallup Poll News Service from  
12 1991.

13 MR. WEBER: Your Honor, I'd move the  
14 admission of Exhibit AM002049.

15 MS. WALBURN: Objection, hearsay.

16 THE COURT: Yeah. Can you lay some  
17 foundation whether she relied on this?

18 BY MR. WEBER:

19 Q. You've relied --  
20 You've relied, as you said, on Gallup polls in  
21 the Surgeon General's report; correct?  
22 A. I only relied on the Gallup poll in that very  
23 one instance, and did not use any Gallup poll  
24 information, including this one, in terms of  
25 etiology, why adolescents start smoking. I wouldn't

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1 consider the Gallup poll a group to tell me why  
2 adolescents start smoking. I wouldn't consider that  
3 a research group for that.  
4 Q. Would you turn to page 116 of the 1994 Surgeon  
5 General's report. Do you have that, professor?  
6 A. Yes, I do.  
7 Q. Do you cite a Gallup -- or does the report cite  
8 a Gallup poll on that page?  
9 A. Yes, it does.  
10 Q. Would you turn to page 199.  
11 A. That was for the chapter on epidemiology, and  
12 I'm not sure why we used it.  
13 Q. Would you turn to page 199.  
14 A. Yes.  
15 Q. And does the Surgeon General's report cite a  
16 Gallup poll on that page?  
17 A. Yes. We were reporting on opinions, this was in  
18 chapter six -- let me just check chapter four in case  
19 my memory was wrong, which it could be -- in the  
20 etiology chapter in which there were no citations for  
21 the Gallup -- for Gallup.  
22 Q. And could you turn --  
23 So the answer is yes, page 199 does cite a  
24 Gallup poll?  
25 A. Yes, we were talking about polling. That is --  
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1 We were talking about polling, we weren't  
2 talking about why do adolescents smoke. And in  
3 this -- the chapter where we talk about why do  
4 adolescents smoke, there were no citations for  
5 Gallup.

6 Q. Could you turn to page 283, professor. And does  
7 the Surgeon General's report cite one, two, three,  
8 four, five, six, seven, eight, nine, 10, 11 Gallup  
9 polls on page 283?

10 A. Yes. Because in this chapter, if you look at  
11 page 210, we had a piece of this called public  
12 opinion about preventing tobacco use among young  
13 people. So the Gallup poll provides opinions, public  
14 opinions about -- about tobacco use; that's different  
15 than being a learned treatise about why adolescents  
16 might start smoking.

17 Q. No, I --

18 Well, you rely on the Gallup polling  
19 organization to produce information that reports  
20 reliably the surveying answers it receives; correct?

21 A. We rely on the Gallup poll to tell us about  
22 opinions around people, opinions, and in this case  
23 those citations, all of them, were in -- I think  
24 almost all of them, were in a part of the Surgeon  
25 General's report that had to do with public opinions

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1 about restrictions on tobacco advertising, smoking in  
2 public places, those kinds of things. So it was very  
3 clearly labeled that these are public opinions.

4 Q. So is it your position that you would not, as a  
5 professional in this area, be interested in finding  
6 out what a nationally reputable polling organization  
7 has determined by surveying people scientifically as  
8 to the reasons those people identified as to why they  
9 began smoking?

10 A. For the most part people can't tell you.  
11 They'll tell you what happened on that very first  
12 occasion, but they can't tell you about the larger  
13 social environment. So I would be relying on much  
14 more complicated types of analyses than a Gallup poll  
15 for that. I might look at the data, but I'm  
16 certainly not going to rely on it to base my -- my  
17 opinion on.

18 Q. Wouldn't even take it into account as part of  
19 the data on which you ought to base your opinion?

20 A. I wouldn't rely on it.

21 Q. In any way.

22 A. I'd look at it, but I mean I might say, well  
23 gee, it's interesting that this percent thinks this,  
24 but I wouldn't consider it --

25 It's not an etiologic or a causal model or a --

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1 it's not very complicated. It tells people's  
2 opinions.

3 Q. Yeah. It just --

4 All it does is say what smokers themselves  
5 believe about why they're smoking. That's not very  
6 complicated; right?  
7 A. Generally it forms into a few categories that  
8 they say, and it --  
9 No, it's not very complicated, where the issue  
10 is complicated, is somewhat complicated.  
11 Q. And when you ask smokers why they began smoking,  
12 the answers almost uniformly relate to peers, friends  
13 and family; don't they, professor?  
14 A. Overwhelmingly adolescents say, you know, their  
15 peers. That's what they will say. Adolescents  
16 usually don't say their -- their family. They would  
17 say their -- their peers. That would be what they'd  
18 say.  
19 Generally what I ask is: Given there are so  
20 many health consequences to smoking, why do people  
21 your age start smoking? And they say, well, you  
22 know, it's a way to look grown up, or it's a way to  
23 act mature, way to be independent. In fact  
24 adolescents themselves identify those developmental  
25 tasks. So it depends, in fact, on -- on the question

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1 that you ask them. So they might identified peers.  
2 Adolescents rarely identify their parents.  
3 Q. Well I was talking about smokers in general,  
4 though. Smokers in general, adolescent and adult,  
5 the answers uniformly are peers, friends and family;  
6 aren't they, overwhelmingly?  
7 A. I really can't attest to family part of that.  
8 Q. You did say that you would at least review a  
9 Gallup poll and take it into account in your  
10 analysis; would you not?  
11 A. I --

12 MS. WALBURN: Objection, asked and  
13 answered.

14 THE COURT: It's been asked and answered.

15 MR. WEBER: Your Honor, I'd move the  
16 admission of the poll again, AM002049, on the  
17 theory -- on the basis the professor said she would  
18 at least review it and take it into account in  
19 connection with her work.

20 THE COURT: Under what rule of evidence is  
21 that, counsel?

22 MR. WEBER: On the fact that she's  
23 relied -- would take it into account in forming her  
24 professional opinion.

25 THE COURT: She said specifically she would

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1 not rely on it.  
2 Denied.  
3 BY MR. WEBER:  
4 Q. Gallup isn't the only organization that's  
5 interviewed smokers or adolescent smokers as to why  
6 they believe they started smoking; is it?  
7 A. No. I think there have been --  
8 I mean if you're thinking of surveys, as I said,

9 I reviewed hundreds of documents -- or studies for  
10 chapter four of this report.  
11 Q. And indeed, the federal government itself does  
12 that sometime; doesn't it?  
13 A. I suppose they do.  
14 Q. And when they go out and interview; that is,  
15 when the federal government goes out and interviews  
16 people about the reasons why they began smoking, you  
17 don't know of any reason why people would not tell  
18 the truth; do you?  
19 A. Well first of all, the federal government  
20 usually gives people grants, and then those people go  
21 out and do the surveying. I mean the people, they  
22 don't come from Washington, D.C., or Bethesda,  
23 Maryland and come out. And they usually give grants.  
24 We're not talking about the truth in this sense;  
25 that is, people will -- will tell the truth for the

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1 most part. The real question is how much do they  
2 understand? What do they perceive? Can they  
3 understand how the larger social environment  
4 influences them?

5 And I've been speaking kind of abstractly, and  
6 I'll give you a kind of concrete example that the --  
7 if -- if the court permits -- permits, and that is  
8 think of the way we eat as Americans. We eat in a  
9 certain way. We have meat, potatoes and vegetables.  
10 That's an American meal. We think that's pretty  
11 normal. Someone goes up to a child and says, "Why do  
12 you" -- well they eat because that's what my family  
13 eats. And we really don't question that until we go  
14 to a different culture. If you go to a different  
15 culture, for example if you go to India, there are  
16 signs that say non-veg, because if it -- if it  
17 doesn't have that sign non-veg, it means all the  
18 restaurants are vegetarian. And it's so striking  
19 because we wouldn't even think how the larger culture  
20 influences what's on our plate to eat. We wouldn't  
21 even think of that until we're put in a different  
22 social environment.

23 Sorry to go on a little tangent, but I wanted to  
24 kind of explain more concretely how that -- how that  
25 might work.

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1 THE COURT: Why don't we take a short  
2 recess now.

3 THE CLERK: Court stands in recess.  
4 (Recess taken.)

5 THE CLERK: All rise. Court is again in  
6 session.

7 (Jury enters the courtroom.)

8 THE CLERK: Please be seated.

9 THE COURT: Counsel.

10 MR. WEBER: Thank you, Your Honor.

11 BY MR. WEBER:

12 Q. Professor, I'd like to turn back to an exhibit  
13 we discussed a few moments ago, I think it's at tab

14 19, and that was the Michigan -- if my notes are  
15 right, that's the Michigan -- University of Michigan  
16 Monitoring the Future study which is in evidence.  
17 A. Yes.  
18 Q. Have we got --  
19 Do I have the right tab for you?  
20 A. Yes. Thanks.  
21 Q. Okay. I think about four pages in in that  
22 exhibit is the press release the University of  
23 Michigan offered or -- or put out in December 19 --  
24 December 20th, 1997, announcing the results.  
25 A. Yes.

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1 Q. Could you read the first paragraph of the press  
2 release on cigarette smoking rates from -- I'm sorry,  
3 from -- this is December 20, 1997.  
4 A. The first paragraph where it says "ANN ARBOR?"  
5 Q. Yes, please.  
6 A. "After six years of steady increase, cigarette  
7 smoking among American eighth-grade students has  
8 leveled, and many even have -- and may have even  
9 begun to decline, according to the most recent  
10 national survey of the Monitoring the Future study.  
11 There is also is evidence that smoking rates among  
12 the nation's 10th-graders may be leveling. Only  
13 among the 12th-graders is there clear evidence of a  
14 further increase in smoking, continuing an upward  
15 march which began five years ago."  
16 Q. Now professor, 15 pages, I think, behind that is  
17 the press release that went with the other University  
18 of Michigan study that came out same date, another  
19 press release with respect -- respect to the drug use  
20 prevalence numbers. If it helps you, it's got the  
21 exact same format as the one you just looked at. Do  
22 you have that?  
23 A. Yes.  
24 Q. Could you read the first and second paragraph  
25 there.

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1 A. "This year's results, based on the 23rd national  
2 survey in the ongoing University of Michigan  
3 Monitoring the Future study, suggest that while  
4 marijuana use continues its longer-term rise among  
5 older teens, use of a number of other illicit drugs  
6 has begun to level off.  
7 "'for the first time in six years, the use of  
8 marijuana and a number of other drugs did not  
9 increase among eighth-grade students in the country,'  
10 states Lloyd Johnston, principal investigator of the  
11 study, 'and while use of marijuana may still be  
12 rising among 10th- and 12th-graders, their use of a  
13 number of other illicit drugs appears to have leveled  
14 off.' Further, key attitudes and beliefs about drugs  
15 that have proven to be important determinants of use,  
16 began to reverse in many cases."  
17 Q. Thank you.  
18 Let me go back, then, to where we were before

19 the break. And if you'll remember, I was asking you  
20 some questions about whether the federal government  
21 undertook efforts to go out and interview smokers,  
22 particularly adolescent smokers, about their  
23 attitudes. Do you remember we just started talking  
24 about that?  
25 A. Yes, I believe we did.

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1 Q. Okay. And if you would turn to tab five,  
2 please, which is AT000507.  
3 A. May I make a comment?  
4 Q. I'm afraid under the rules we can't do it that  
5 way. Unless you need help with the exhibits where we  
6 put the book wrong. Obviously --  
7 Now are you at tab five?  
8 A. Yes, I am.  
9 Q. And is that an official notice from the  
10 Department of Health and Human Services, Food and  
11 Drug Administration, regarding regulations  
12 restricting the sale and distribution of cigarettes,  
13 et cetera?  
14 A. Yes, it is.  
15 Q. And if you look at the top of the page that  
16 begins 61670 -- do you see that, professor?  
17 A. Yes.  
18 Q. And this is from the Federal Register on Friday,  
19 December 1, 1995?  
20 A. Yes.  
21 Q. And this deals with the FDA's proposed  
22 rule-making regarding the sale and distribution of  
23 cigarettes, as you see from the title there in the  
24 left-hand column.  
25 A. It's findings from the focus group of brief

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1 statements for cigarette advertisements.  
2 Q. All right.  
3 MR. WEBER: Your Honor, I'd move the  
4 admission of Exhibit AT000507 as an official  
5 government report from the Federal Register on  
6 December 1, 1995.  
7 MS. WALBURN: No objection, provided this  
8 is the complete document.  
9 THE COURT: Is that complete, counsel? Is  
10 that a complete document?  
11 MR. WEBER: Yes. Yes, it is, Your Honor.  
12 THE COURT: It is complete. All right.  
13 Then the court will receive A2 -- AT000507.  
14 BY MR. WEBER:  
15 Q. Now have you seen this document before,  
16 Professor Perry?  
17 A. I believe I saw it. I haven't studied it. So  
18 if you want me to respond to something, I'll need a  
19 little time to familiarize myself.  
20 Q. Sure. You didn't look at it in connection with  
21 the designation list?  
22 A. Yes, I looked at all the documents, but there  
23 were three full boxes of documents. I couldn't --

24 that was just a few days ago. I couldn't study each  
25 document. So that if you want me to give an opinion  
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1 on this, I would need time to read it.

2 Q. Okay. If I ask you a question where you think  
3 you need to read something else in this, please just  
4 let me know. All right?

5 A. Could I have a few minutes right now to review  
6 the document?

7 Q. You can. Although, you know, I -- I could also  
8 just go ahead and ask you about the areas I'm asking  
9 you, and you can see whether you need context.

10 THE COURT: Why don't you go ahead and take  
11 a few minutes.

12 THE WITNESS: Thank you.

13 A. Well I have a little bit of an idea what this is  
14 about.

15 Q. Okay. And what this document reports on are the  
16 results of a series of focus groups that the FDA held  
17 and which FDA went around the country and talked to  
18 adolescents; correct?

19 A. Yes, about what kind of warning labels, you  
20 know, that adolescents might attend to.

21 Q. And they showed them advertisements and talked  
22 to the adolescents about advertising as well; did  
23 they not?

24 A. Yes. I believe from my brief reading that they  
25 did do that.

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1 Q. And if you'll turn, professor, to page 61671 in  
2 the right-hand column there, I think it has a list of  
3 all of the different focus groups you'll see that the  
4 FDA conducted around the country.

5 A. Ah --

6 Q. And --

7 Do you have that, ma'am?

8 A. Yes.

9 Q. And you'll see about halfway down that column,  
10 maybe a little less than halfway, it notes that four  
11 of the groups, FDA focus groups, were conducted in  
12 Minneapolis; correct?

13 A. Yes.

14 Q. Now if you would turn to page 61673, and if you  
15 would read paragraph -- could you read paragraph one,  
16 please, of the FDA's general findings, as a result of  
17 these focus groups in which they were speaking with  
18 teens, smokers and non-smokers.

19 A. "All of the groups indicated that a high  
20 percentage of adolescents will try cigarette smoking  
21 at some time during their teen-age years. Estimates  
22 of the number of teens who will try smoking ranged  
23 from 50 to 99 percent. The major reasons given for  
24 why teens try smoking included: peer pressure, doing  
25 something adults would not approve of, the perception

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1 of smoking as "cool," curiosity, and being around  
2 parents, other family members and friends who smoke."

3 Q. Now --

4 And then it's followed up with some quotations  
5 from some of the focus group members; correct?

6 A. Yes.

7 Q. In this first finding, first general finding of  
8 the Food and Drug Administration, based on the focus  
9 groups, they listed major reasons given for why teens  
10 try smoking; correct?

11 A. They listed the major reasons that the  
12 adolescents gave. Those are not necessarily the  
13 major reasons that kids start smoking, this is what  
14 the adolescent --

15 Just like when I talked with you before about  
16 how we ask adolescents why do kids smoke, they give  
17 us these same reasons. So this is a focus -- you  
18 know, that's the focus group. So this is the  
19 adolescent perceptions, and remember that they can  
20 only see things close at hand.

21 Q. But the major reasons given by the adolescents  
22 did not include advertising; correct, professor?

23 A. It did not include advertising, although it says  
24 right on the first page that all the groups expressed  
25 familiarity with the advertising that was shown to

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1 them and many were aware of incentive programs  
2 sponsored by major cigarette manufacturers whereby  
3 cigarette smokers would receive clothing items or  
4 other products by cashing in Camel Dollars or  
5 Marlboro Miles for product from the catalog. The  
6 focus group said they felt the primary target of  
7 cigarette ads were teens and young adults, and that  
8 ads show people having a good time so the kids will  
9 think that their lives will improve if they smoke.

10 Q. Now is the answer to my question yes, the major  
11 reasons listed in general finding one by the Food and  
12 Drug Administration for why teens try smoking did not  
13 include advertising or promotion?

14 A. Yes, it didn't include it, just as it's  
15 consistent with my testimony yesterday that teens  
16 don't list advertising. They don't see it. So it's  
17 quite consistent.

18 Q. And -- and that is consistent with your own  
19 research over the years when you've talked to teens.

20 A. It's consistent that, as it says in the tobacco  
21 industry documents, people in general don't  
22 understand how they're being, quote, unquote,  
23 positioned. They don't understand --

24 That's how the tobacco industry documents refer  
25 to it as well, that they don't understand how they're

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1 being positioned.

2 Q. So that is consistent with your research, that  
3 teens do not identify advertising?

4 MS. WALBURN: Objection, asked and

5 answered.

6 THE COURT: You can answer it, if you want  
7 to, again.

8 A. The major reasons listed here are generally what  
9 I hear from teens.

10 Q. Could you turn to the next page, professor, and  
11 read paragraph three.

12 A. "Most of the participants indicated that they do  
13 not believe that they were influenced by cigarette  
14 advertisements.

15 "'I mean, it has nothing to do with the ads.  
16 They don't keep me from it, nor do they make me do  
17 it.'

18 "'If -- If you're just flipping through a  
19 magazine and you see it, you might stop and you might  
20 see something you don't -- you like about it, and  
21 then flip on through. You don't really think of  
22 smoking or not -- not smoking.'"

23 Q. Now another source of information in this case,  
24 professor, on why people smoke, is the depositions of  
25 the Medicaid recipients whose testimony was taken.

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1 Have you reviewed any of those depositions?

2 A. No, I haven't.

3 Q. So you don't know what the deposition -- what  
4 the Medicaid recipients who gave testimony in this  
5 case said about the reasons they smoked, at least the  
6 ones who were smokers?

7 A. No, I don't.

8 Q. Were those offered to you by counsel?

9 A. I didn't ask for them.

10 Q. Were they offered to you?

11 A. I don't believe so.

12 Q. Did you know they existed?

13 A. I knew that some Medicaid depositions were being  
14 taken.

15 Q. Were you at all interested to know what Medicaid  
16 recipients had to say about -- strike that.

17 Were you at all interested to know what Medicaid  
18 recipients who smoked had to say about why they  
19 started smoking?

20 A. Not really. They're a small handful of people.  
21 They are going to be influenced by cigarette  
22 advertising and promotion like other people. I  
23 didn't see that a handful of -- of people -- I didn't  
24 see that they would be any differently influenced  
25 than other people.

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1 Q. And as I understand your testimony, you find it  
2 to be a more reliable indicator -- strike that.

3 As I understand your testimony, you find more  
4 reliable evidence on why people smoke from sources  
5 other than the smokers themselves; is that fair?

6 A. You know, we gathered data from a large --  
7 different kinds of sources, so we will gather data  
8 from never smokers, non-smokers, smokers. My  
9 research is with adolescents, and so I will be

10 looking at that whole range. More sophisticated  
11 research lately also gathered data at the community  
12 level or at the school level or at larger levels,  
13 and -- and that can help also in looking at etiology.  
14 But for the most part, what I relied on in chapter  
15 four were surveys of students.

16 Q. I'm sorry, I want to make a note here on this  
17 one thing.

18 Now do you know whether those on Medicaid or  
19 GAMC here in the state of Minnesota are more likely  
20 to present with a cluster of the psychosocial risk  
21 factors that were discussed in the 1994 report than  
22 is the general population?

23 A. I don't know for sure. I would imagine that  
24 they are poorer people, less wealthy people, but I  
25 really haven't studied Medicaid.

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1 Q. Would you turn -- I think it's page 123 in the  
2 '94 report right there on your left, and that's your  
3 list of psychosocial risk factors, if you'll  
4 remember, and -- and I just wanted to refer you to  
5 that to see if that might refresh your -- or give you  
6 some further thought as to whether or not those on  
7 Medicaid or GAMC here in Minnesota would present with  
8 more of a cluster of risk factors than would the  
9 general population. It may or may not.

10 A. No, this chart wouldn't help with that at all.

11 Q. Okay.

12 A. And that really isn't my area of study.

13 Q. Now Surgeon General Elders in the '94 report, in  
14 that portion we were talking about earlier, said that  
15 research suggested that tobacco promotion had two  
16 major effects. Do you remember that?

17 A. Yes, I do.

18 Q. And one was the issue that creates a perception  
19 that more people smoke than actually do; correct?

20 A. Yes, that's what's written here.

21 Q. Now on that --

22 I want to discuss that over-perception issue for  
23 a minute, which is one of the two major effects of  
24 cigarette advertising identified by Surgeon General  
25 Elders.

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1 A. There were three in that, sir, but in this  
2 preface, you're right, there are only two listed.

3 Q. The Surgeon General said there were two major  
4 effects; correct, in that second-to-the-last  
5 paragraph?

6 A. Yes, that's in her preface, yeah, but that  
7 wasn't quite consistent with our major conclusions.

8 Q. Well let's just talk about her viewpoint now.  
9 She said two major effects, and one of them is  
10 over-perception.

11 A. That's correct.

12 Q. Right?

13 Now the '94 report did cite some research  
14 regarding over-perception; correct?

15 A. That's right.  
16 Q. And if you turn to page 132, I think that  
17 discusses a study by Collins. Do you have 132?  
18 A. Yes.  
19 Q. And down in the second column under "Norms,"  
20 professor, --  
21 A. Yes.  
22 Q. -- it discusses research by Collins. It says,  
23 "Previous smoking and peer smoking were the main  
24 predictors of overestimates in the Collins study."  
25 Correct?

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1 A. That's what it says.  
2 Q. Now --  
3 And then in the last line there it said, "In  
4 part, these normative expectations may be a function  
5 of these beginning smokers' actual exposure to a  
6 disproportionate number of smokers, including adults  
7 and peers." Correct?  
8 A. Well what it says is "in part." I mean the  
9 other part, which we discussed later in the Surgeon  
10 General's report, is that these overestimates were  
11 related to exposure to cigarette advertisement. So  
12 this was in part. And I'm not sure in the Collins et  
13 al '87 study, that she looked at any indicator of  
14 advertising in that. But that's what it said.  
15 Q. Well it makes sense to you as an educator,  
16 doesn't it, that a smoker who is more likely to have  
17 friends who smoke, more likely to have brothers or  
18 siblings who smoke, more likely to be in a family  
19 that smokes, more likely to have peers who smoke, it  
20 makes sense to you as an educator that such a person  
21 would overestimate the prevalence of smoking in the  
22 general population; wouldn't it?  
23 A. Well it's not consistent with my experience, and  
24 I --  
25 If you remember, Mr. Weber, that I have actually

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1 done this exercise in hundreds and hundreds of  
2 classrooms, and it's not just the students who have  
3 peers or parents who smoke that overestimate, the  
4 great majority overestimate. In fact, in the fourth  
5 grade, young people believe that 71 percent or about  
6 two-thirds of adults smoke, even though, you know,  
7 it -- that's an overestimate by a factor of two, and  
8 certainly 67 percent of those young people don't have  
9 peer and parents who smoke. So that can't explain  
10 it. It just can't explain it all. And it's not  
11 consistent with my experience, which is classroom  
12 after classroom after classroom of these  
13 overestimates.  
14 Q. Well at least Collins in the '94 report said, in  
15 part, the over-perception may be due to the fact that  
16 the adolescent is with, sees, hangs around, whatever,  
17 a disproportionate number of smokers. Do you --  
18 A. Yes. And in part it may also be due to exposure  
19 to cigarette advertisements.

20 Q. Now the converse is also true, isn't it, that  
21 those adolescents who don't have smokers at home,  
22 whose friends don't smoke, whose peers don't smoke,  
23 tend to underestimate the prevalence of smoking in  
24 society?  
25 A. No, that's -- that's completely incorrect. It's  
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1 the relative amount of overestimate. Almost all  
2 adolescents overestimate the amount of smoking.  
3 Virtually none that I have dealt with have  
4 underestimated the amount of smoking. So it's the  
5 relative amount of overestimates.  
6 Q. Bear with me just a moment, Your Honor. I'm  
7 sorry.  
8 Didn't the Institute of Medicine report that you  
9 were part of say that non-smokers underestimated the  
10 number of adolescents who had ever tried smoking  
11 while regular smokers overestimated?  
12 A. I cannot remember that, so I would need to look  
13 at that document.  
14 Q. Now adolescents get their information on norms  
15 regarding the acceptability of smoking from a wide  
16 variety of sources; do they not?  
17 A. "Norms" meaning is it okay to smoke, how many  
18 people smoke. Most of the time they measure it by  
19 the -- by these estimates of prevalence or estimates  
20 of how many people smoke, that's how it's usually  
21 measured, but it's also whether smoking is considered  
22 acceptable.  
23 Q. But again, their attitudes as to whether or not  
24 smoking is acceptable, as to whether it's normative  
25 or normal or accepted behavior in society, those  
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1 messages to adolescents come from a great variety of  
2 sources; do they not?  
3 A. Yes, they come from -- they can come from the  
4 whole social environment. But obviously a powerful  
5 source is going to be something as pervasive as  
6 cigarette advertising. I think it's -- it's the --  
7 probably the only source that gives a consistently  
8 positive message about cigarette smoking.  
9 Q. Well it's not wholly positive; is it? Each ad  
10 carries a warning of serious health consequences;  
11 doesn't it?  
12 A. Well the warning label is so small and really  
13 hasn't shown to be very effective.  
14 Q. The warning label is the size the Federal Trade  
15 Commission says it should be; isn't it?  
16 A. Yes, but it hasn't been shown to be effective.  
17 Q. Have you ever written to the Federal Trade  
18 Commission, told them they need to make a bigger  
19 warning?  
20 A. No. I believe we discussed that a bit in the  
21 Surgeon General's report, but I haven't personally  
22 done that.  
23 Q. Now --  
24 And you discussed a few moments ago the

25 importance of community and schools' involvement.  
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1 That's part of the whole social fabric that helps set  
2 norms about tobacco use; correct?  
3 A. Yes.  
4 Q. And to be sure, you know of no adolescent whose  
5 only information on smoking or the norms of tobacco  
6 use comes from the cigarette companies; right?  
7 A. Virtually all adolescents are exposed to  
8 cigarette advertising and promotions, which, except  
9 for the small warning label which is completely  
10 overshadowed by positive and attractive images, gives  
11 an overwhelmingly positive picture of -- of cigarette  
12 advertising and promotion. These other parts of the  
13 community may also give messages about cigarette  
14 smoking, but they're not going to be positive or  
15 consistently positive.  
16 Q. Do you --  
17 Let me just make sure I understand. You know of  
18 no adolescent whose only information on smoking or  
19 the norms of tobacco use comes from the tobacco  
20 companies; correct?  
21 A. You know, I deal with population, with  
22 communities of adolescents. You know, I can't say  
23 whether an individual --  
24 I can say adolescents in general are highly  
25 exposed to positive messages about cigarette smoking  
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1 from cigarette advertising and promotional  
2 activities. Virtually every adolescent is exposed to  
3 these.  
4 Q. So you just --  
5 The way I'm asking that, you just can't answer  
6 that.  
7 A. It's not the way I'd look at the picture.  
8 Q. Could you turn to page 130 of your deposition,  
9 please, and at line -- beginning at line eleven, let  
10 me ask do you remember being asked this question and  
11 giving this answer:  
12 "Let me ask my question again: As you sit here  
13 today, do you know of any adolescent whose only  
14 learning about smoking has come from tobacco industry  
15 ads?  
16 "Answer: I don't know any adolescent whose only  
17 source of information has come from the tobacco  
18 industry."  
19 Was that the question you were asked and the  
20 answer you gave then, ma'am?  
21 A. Well yes. We went back and forth on the same  
22 exact question, and that's what I said.  
23 Q. Thank you.  
24 Now among the sources from which adolescents get  
25 information on the norms of tobacco use would be  
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1 their parents; correct?  
2 A. Parents generally disapprove of adolescents  
3 smoking. They may model -- as I mentioned yesterday,  
4 they may model cigarette smoking, they may also model  
5 the health consequences. Overall parents don't want  
6 their children to smoke.

7 Q. So they do --

8 Children do get information about the norms of  
9 tobacco use from their parents.

10 A. They generally get information from their  
11 parents that their parents would disapprove of  
12 smoking.

13 Q. And they get that information from their parents  
14 by through what the parents say and what the parents  
15 do; correct?

16 A. Yes, they might.

17 Q. And they get information on the norms of smoking  
18 also from older siblings; do they not?

19 A. You mean of whether smoking is acceptable  
20 behavior?

21 Q. Whether it's acceptable behavior.

22 A. Siblings might model that behavior or not. But  
23 I think we need to go back and remember that parental  
24 smoking is not a very strong predictor of adolescent  
25 smoking, and sibling smoking is associated with kind

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1 of peer smoking. So, you know, we're -- we're kind  
2 of going in a round-about way of -- of norms, and,  
3 you know, you're asking questions that really haven't  
4 been researched.

5 Q. So it hasn't been researched, whether  
6 adolescents get information about normative behavior  
7 from their older siblings about smoking?

8 A. You mean whether -- they'll get -- they'll  
9 get --

10 There's been some information as to  
11 whether would your -- would your brother or sister  
12 approve, would your mother or father approve. That  
13 hasn't been very predictive of adolescent smoking  
14 behavior.

15 Q. Even aside from the research, isn't it just  
16 common sense, professor, to you as an educator, that  
17 the attitudes of older siblings will give information  
18 to the younger siblings, both through what they say  
19 and what they do?

20 A. Yes. But it can go in either direction. Just  
21 as I said yesterday about parents, a parent may model  
22 smoking behavior and that might have an influence, or  
23 the -- the parent may model the consequences of  
24 smoking behavior and that will also have an  
25 influence. The same is true for siblings.

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1 Q. I didn't mean to imply in my question that the  
2 information had to be disapproval of smoking. And --  
3 and maybe I did, and if so, I apologize. I was just  
4 asking whether the younger siblings get information  
5 about what's acceptable and what's not acceptable

6 through a number of sources, and one of those sources  
7 being the older brothers and sisters and what they  
8 say and do?  
9 A. I imagine to some extent. I don't think there's  
10 really much research on that though.  
11 Q. But it makes sense to you as an educator; right?  
12 A. It makes some sense.  
13 Q. Now they also get information on what's  
14 acceptable behavior and what's not acceptable  
15 behavior regarding smoking from their close friends  
16 and peers; correct?  
17 A. Yes, they do. That's probably a more powerful  
18 source than parents or peers -- or parents or  
19 siblings.  
20 Q. I'm sorry.  
21 A. Parents or siblings.  
22 Q. I'm sorry, I may have stepped on your answer.  
23 Did -- did you finish?  
24 A. Yes, I did.  
25 Q. Okay. I'm sorry.

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1 Now adolescents also get information on what's  
2 acceptable or unacceptable regarding tobacco use from  
3 the schools; do they not?  
4 A. Well they receive smoking education and there  
5 are smoking rules. Whether that affects their  
6 normative beliefs, it might be -- it --  
7 There's been some indication that since we have  
8 smoke-free schools, and in fact Minnesota was one of  
9 the first states with smoke-free schools, that that  
10 did have an influence on adolescent smoking behavior.  
11 So it could affect at least their behavior.  
12 Q. And Minnesota schools, as a matter of fact, have  
13 taught about the risks and dangers of smoking for  
14 generations as part of their health curriculum;  
15 haven't they?  
16 A. Are you referring to a particular document?  
17 Q. No. I'm just --  
18 As a general matter, do you know as an educator  
19 and professor here at the U of M that for generations  
20 the Minnesota public schools have included as part of  
21 the public health curriculum for students information  
22 about the risks and dangers of cigarettes?  
23 A. Well Minnesota has always been a leader in  
24 smoking prevention, so I would imagine that they -- I  
25 came here in 1980, but I imagine they had been a

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1 leader in smoking education as well. But if you  
2 remember from my discussion yesterday, that even if  
3 adolescents know the risks of smoking, that that has  
4 very little to do with their behavior. They can't  
5 comprehend those risks. Those risks are remote and  
6 not really consequential to them. They -- they  
7 really can't act on those.  
8 So the schools in Minnesota, yes, taught about  
9 the risks, but that, like most of the education  
10 around smoking in the country, until recently really



11 didn't have any effect on their behavior.  
12 Q. And indeed, youth engage in a number of  
13 behaviors that are risky even though they know the  
14 dangers that may be involved; isn't that right?  
15 A. Youth, as I said yesterday, youth engage in a  
16 number of -- of risk behaviors in order to try to  
17 accomplish their developmental task and because they  
18 don't understand the consequences of it.  
19 Now as we saw yesterday, the tobacco industry  
20 knew -- knows that adolescents take risks, they know  
21 that, and they use that knowledge to create their  
22 cigarette advertising. So they actually exploited  
23 the fact that adolescents take risks. If you can  
24 even think of, you know, the ads that -- with the  
25 blonde or the running into the water and carrying her

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1 out, I mean that is kind of risky behavior that was  
2 exploited in that advertisement.  
3 Q. And I think you referred yesterday to some risky  
4 behavior in a Camel ad where they were playing cards.  
5 Do you remember that? You said that was risky  
6 behavior to take.  
7 A. I think I said that it suggested some -- you  
8 know, suggested risk when Joe Camel was with his peer  
9 group and -- and the main point of that ad was that  
10 it -- that it was really targeting the peer group and  
11 showing that if you smoke Camel, you'll be part of  
12 the in-group, you'll be cool. And of course if you  
13 play cards, you are at perhaps some risk if you lose  
14 enough of your pennies.  
15 Q. So to you, in your review of that advertisement,  
16 the fact that they were playing cards suggested risky  
17 behavior; is that right?  
18 A. I thought that was a slight part. But really  
19 the overall, the main thing I was -- I found from  
20 that advertisement was Joe Camel and the peer group  
21 having a good time and smoking associated with the  
22 peer group. The risk behavior of playing cards was a  
23 little afterthought.  
24 Q. But you did mention that yesterday; didn't you?  
25 A. I did mention in it, but it really wasn't a

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1 major part of my analysis of that ad really. That  
2 was -- the major was the peer pressure, peer group  
3 ad.  
4 Q. Do you think card playing is a risky behavior  
5 for either adolescents or adults?  
6 MS. WALBURN: Objection, asked and  
7 answered.  
8 THE COURT: No, you may answer that.  
9 A. I suppose you could lose a few cents. So -- but  
10 I -- I don't think that for the most part playing  
11 cards is a health-compromising behavior, which is how  
12 I tend to define it in my class, so I don't think it  
13 was really -- it just had a suggestion of risk and --  
14 and -- but it's not really -- I -- I really don't  
15 think it would be health-compromising.

16 Q. Have you done --  
17 I take it the answer may be no, but let me ask  
18 just to make sure the record is clear. Have you done  
19 any study of what the public schools in Minnesota  
20 have taught and for how far back they've taught it  
21 about risks of tobacco and about whether adolescents  
22 should smoke?

23 A. I've done some studies in -- in --  
24 I've done lots of studies in schools in  
25 Minnesota having to do with smoking, but, you know,  
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1 I -- I don't really know what you --  
2 You mean have I done a historical analysis of --

3 Q. Yes, I'm saying --

4 A. No, I have not done a historical analysis of --  
5 of what's been taught in Minnesota schools.

6 Q. Now I think from what you said a minute ago,  
7 you'd agree that schools instruct about norms on  
8 tobacco behavior in their policies about smoking,  
9 both for teachers and for students?

10 A. Yes. And as I said, Minnesota was really a  
11 leader in that area.

12 Q. And rules that prohibit smoking in schools send  
13 a message?

14 A. Rules that are --

15 Yeah, rules do send a message.

16 Q. And enforcing those rules sends a message as  
17 well; right?

18 A. Yes. However, when it comes to smoking in  
19 schools, really for many decades smoking was -- was  
20 allowed in -- in schools. There was a smoking  
21 section. And this was -- was true throughout the  
22 country. It was really only in the last two decades  
23 that -- that that -- that that really changed. And  
24 in fact I -- Minnesota was probably the first state  
25 that enacted that schools would be smoke-free. And

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1 one of my studies, which was done in Minnesota,  
2 California, Texas and Louisiana, part of our study  
3 was to create smoke-free schools, and the study  
4 started in 1990, and Minnesota, out of all those  
5 states, was the only state in which we already had  
6 that in place, that there was no smoking in schools.  
7 So California, Texas and Louisiana still had smoking  
8 going on in schools. And that was really because  
9 school administrators just didn't want to deal with  
10 smoking as a -- as a discipline problem, and so they  
11 had smoking areas. And now people have come along  
12 quite a ways on that, and -- but there's still many  
13 parts of the country that aren't like Minnesota  
14 where -- where kids smoke in schools.

15 Q. And views on issues like that have changed over  
16 the past 20, 25 years; have they not, professor?

17 A. Well --

18 Q. Much less tolerance now?

19 A. Well I can think in Minnesota there's less  
20 tolerance. I'm not sure that's true throughout the

21 country.  
22 Q. Are you aware that back in 1973, I believe,  
23 about 25 years ago, Attorney General Humphrey, when  
24 he was in the state legislature, sponsored a bill to  
25 create smoking rooms in Minnesota high schools?

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1 MS. WALBURN: Objection to the form of the  
2 question and outside the scope of the direct  
3 testimony.

4 THE COURT: If you're aware of it, you can  
5 answer.

6 A. I've --

7 I think a document was passed by me, but I  
8 didn't really study that document.

9 Q. Could you turn to tab six, which is BYS000021.  
10 Now professor, do you have -- do you see the document  
11 there with the -- it's labeled BYS000021 in the lower  
12 right-hand corner of the first page?

13 A. Yes, I do.

14 Q. And on the first page it says "TRIPLICATE S.F.  
15 No. 2448?"

16 A. Yes.

17 MR. WEBER: Your Honor, I move the  
18 admission of this document under 803(16) as an  
19 ancient document, it's dated 1973, under 801(d)(2),  
20 under 803(8) as a public record, and it's also a  
21 self-authenticating document under 901(d).

22 MS. WALBURN: Objection to the use of the  
23 document with this witness. There's no foundation  
24 that's been laid. It was only presented to her as  
25 part of the defendants' designation of several boxes

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1 of documents.

2 THE COURT: Well I'll receive the  
3 BYS000021.

4 MR. WEBER: All right.

5 BY MR. WEBER:

6 Q. Professor, would you turn to the first page of  
7 that, and do you see there that one of the sponsors  
8 was Senator Humphrey?

9 A. Yes, I see that.

10 Q. And then if you go to the next page, could you  
11 read section one.

12 A. "Notwithstanding the provisions of Minnesota  
13 Statutes 1971, Section 609.685, or any other law to  
14 the contrary, any public secondary school may  
15 designate a public smoking area within its confines  
16 which may be used by students either 18 years of age  
17 or older or by students having presented school  
18 authorities with a written consent, on a form to be  
19 prescribed by school authorities, signed by a parent  
20 or guardian."

21 Q. Now that bill did not pass, but does the fact  
22 that such a bill was introduced in 1973 that would  
23 have allowed smoking in school as a matter of state  
24 law tell you anything about whether there's been a  
25 substantial change in attitude about the norms of

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1 smoking in Minnesota over the past 25 years?  
2 MS. WALBURN: Objection to the form of the  
3 question.

4 THE COURT: You may answer.

5 A. First of all, this didn't pass. Second of all,  
6 the -- I believe, you know, Mr. Humphrey was trying  
7 to make sure that the people smoking at school  
8 weren't smoking in the bathrooms, weren't smoking in  
9 the halls and so forth. This was the exact time in  
10 California when I was a teacher, and smoking was  
11 going on everywhere. So I think I -- I believe his  
12 intention was to make sure there was parent  
13 permission for smoking and -- and have smoking 18  
14 years of age and -- and older.

15 We have, I think, as a state -- obviously it's  
16 progressed since then, and I'm not sure that reflects  
17 norms. I'm not sure it reflects norms, but perhaps  
18 even greater recognition of the health hazards of  
19 smoking, and certainly the relationship that -- or  
20 the recognition that adolescents are the primary  
21 people who become smokers, that they become addicted  
22 during adolescence and become life-long smokers. So  
23 I don't think that connection on all those issues was  
24 as well understood at this time in the early '70s as  
25 it certainly is now.

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1 And as I've said before, you know, Minnesota  
2 was -- was and is way ahead of other -- of other  
3 schools -- of other states in -- in all these -- in  
4 all these areas.

5 Q. In terms of its knowledge and acceptance of the  
6 health risks of smoking, among other things?

7 A. Well in terms of its enactment of laws that  
8 will -- you know, that will maintain the health of  
9 Minnesotans. We were the first state to have a Clean  
10 Indoor Air Act. We were the first state to have a  
11 large tax increase with part of that going to  
12 educating the public. And we were the first state to  
13 have a teen-age -- a comprehensive teen-age access  
14 law. So Minnesota was ahead in terms of its -- its  
15 legislation. I believe it was the first state on the  
16 teen-age access law. We're among the first in,  
17 anyway.

18 Q. Now is it fair to say that back in 1973,  
19 attitudes with respect to matters such as whether  
20 kids should smoke in school were different than they  
21 are here in the late '90s?

22 A. I think that there were -- I believe there was  
23 more acceptance of smoking in schools then, and that  
24 that was not related as much to norms as it was to  
25 our general knowledge in the -- in the -- in the

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1 field of smoking.

2 Q. And when evaluating matters such as this bill to  
3 allow smoking in school, it's unfair to take our 1998  
4 mentality and -- and go back and look at a 1973  
5 action; isn't it?

6 A. Well I think we can go back and -- to that and  
7 say, you know, I think we can look at that and say,  
8 you know, that was -- that we probably shouldn't have  
9 been doing that.

10 Q. But in terms --

11 To be fair to Senator Humphrey, then, we have to  
12 go back and put that event and that document in the  
13 context of it times; don't we?

14 A. Well the first Surgeon General's report came out  
15 in 1964. We -- we probably knew enough that we  
16 shouldn't have been allowing young people to smoke.  
17 You know, I'm -- I'm glad the bill didn't pass.

18 Q. But wouldn't you agree with me that if you're  
19 going to go back and evaluate actions taken by  
20 Senator Humphrey or anyone else 25 years ago, you  
21 need to put those events in a historical context and  
22 not engage in 20/20 hindsight?

23 MS. WALBURN: Objection, asked and  
24 answered.

25 THE COURT: You may answer.

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1 A. I have no other thing to say on this. I said --  
2 I said my answer.

3 Q. Well this question was different. I'm sorry,  
4 professor. This question was: Wouldn't you agree  
5 with me that if you're going to go back and evaluate  
6 actions taken by Senator Humphrey or anyone else 25  
7 years ago, you need to put those events in a  
8 historical context and not engage in 20/20 hindsight?

9 A. I'm not sure. I'm really not sure.

10 Q. Do you think it's fair to go back and evaluate  
11 events of 25 years ago with today's mindset without  
12 taking into account the situations that presented  
13 people at the time?

14 MS. WALBURN: Objection, asked and  
15 answered.

16 THE COURT: You may answer that.

17 A. You're speaking in hypotheticals, and I really  
18 can't -- that's why I say I'm not sure. I -- if you  
19 give me a concrete --

20 You gave me a concrete example here and I gave  
21 you an answer. I don't want to -- to speculate, you  
22 know, that's -- that's why I said I'm not sure.

23 Q. Could you turn to Plaintiffs' Exhibit 11801 and  
24 I think '802. There were a pair of them that were  
25 connected, professor, 11801 and '802.

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1 THE COURT: One more book and I won't even  
2 be able to see the top of your head.

3 (Laughter.)

4 THE WITNESS: I'll have to sit on them.

5 A. Yes, I see this.

6 Q. Do you have that?

7 A. Yes, I do.  
8 Q. And do you remember discussing that document, I  
9 believe yesterday in your testimony?  
10 A. Yes, I do.  
11 Q. And this was a survey that Philip Morris did  
12 that included information on people 12 to 17 years  
13 old, I believe?  
14 A. Yes, it was.  
15 Q. You see the date on that?  
16 A. Yes. 1973.  
17 Q. May 18?  
18 A. Right.  
19 Q. That's about a week and a half after Senator  
20 Humphrey addressed -- introduced his bill into the  
21 Senate to create smoking rooms in Minnesota high  
22 schools; correct?  
23 A. This is May 1973.  
24 Q. And Senator Humphrey's bill was May 1973; was it  
25 not?

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1 A. I don't really remember the exact date.  
2 MR. WEBER: Just to make it easy, may I  
3 approach, Your Honor, rather than look in another  
4 book?  
5 (Document handed to the witness.)  
6 Q. You can have that copy just for a minute.  
7 Do you see the date on there, professor, for the  
8 introduction of the bill?  
9 A. Yes.  
10 Q. And it's about a week or 10 days from the date  
11 of the Philip Morris document?  
12 A. Yes.  
13 Q. Okay. So this Philip Morris document was  
14 prepared at a time -- in the same timeframe as the  
15 bill was introduced to allow smoking rooms in high  
16 schools in Minnesota; correct?  
17 A. This was at a time which was nine years after  
18 the cigarette advertising and promotional code was  
19 adopted by the tobacco industry and said that you  
20 would -- that you, the tobacco industry, would not  
21 advertise in any way to people under age 21, and this  
22 document is nine years after that and it includes  
23 data on 12- to 17-year-olds, and then the  
24 accompanying document has a lot of demographic  
25 information on boys and girls and -- and what grade

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1 they completed and whether they were white collar or  
2 blue collar, and, you know, the -- you know, this  
3 is --  
4 You know, this doesn't have to do with norms,  
5 this has to do with violating what you said you would  
6 do. You said that you wouldn't be looking at people  
7 under age 21. You know, this is data on 12- to  
8 17-year-olds. This is at a time when Philip Morris  
9 was doing very well with Marlboro. I can't see the  
10 comparison between this and Mr. Humphrey's bill at  
11 all.

12 Q. Could you answer my question, professor, which  
13 was: So this Philip Morris document was prepared at  
14 a time -- in the same timeframe as the bill was  
15 introduced to allow smoking rooms in high schools in  
16 Minnesota; correct?

17 MS. WALBURN: Objection, asked and  
18 answered.

19 THE COURT: It's been asked and answered.

20 Q. Now you said yesterday with respect to this  
21 Philip Morris document that this data would be useful  
22 in selling cigarettes. Do you remember that?

23 A. Yes, I do.

24 Q. Now as you told us earlier, you have never been  
25 involved in creating, developing or implementing a

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1 marketing plan for consumer products; correct?

2 A. Yes, I -- I want to expand on that a little bit,  
3 because now I've looked at quite a number of  
4 marketing documents and I hadn't looked at -- at a  
5 lot -- at marketing documents prior to this -- to  
6 this case, and what I found in looking at the  
7 marketing documents is that they are very similar to  
8 the kinds of documents I prepare to do my large  
9 community-wide interventions; that is, we have a  
10 goal, we have objectives, we have a target group, we  
11 have a main theme, like if it's the Marlboro Man, or  
12 we have our own, and we have a multi-component  
13 strategy. So the marketing plans that the tobacco  
14 industry produces are similar to the kinds of  
15 intervention or educational, large educational plans  
16 that I do, it's just that we have different goals;  
17 whereas I want to get kids not to smoke, they try to  
18 get kids to smoke.

19 Q. Can I ask --

20 Can you answer my question, professor? You have  
21 never been involved in creating, developing or  
22 implementing a marketing plan for consumer products;  
23 correct?

24 A. As I explained, what I do is very similar to  
25 marketing, sometimes called social marketing, and as

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1 I said, I believe yesterday, that I haven't done that  
2 in the private sector.

3 Q. Okay. So the answer is no, you have not  
4 created, developed or implemented a marketing plan to  
5 consumer products; correct?

6 MS. WALBURN: Objection, asked and  
7 answered.

8 THE COURT: It's been asked and answered.

9 Q. Now do you know that in 1973, when Philip Morris  
10 wanted to develop marketing plans, it ran focus  
11 groups on the smokers that it wanted to market to?

12 A. Not that I can remember.

13 Q. Did you get from the plaintiffs' counsel focus  
14 group research on any marketing plans?

15 A. Yes, I looked at a lot of focus group research,  
16 but I don't remember a particular document at this

17 particular time.  
18 Q. And isn't it consistent with what you do know  
19 that marketing plans were not developed and no  
20 marketing campaign was taken to market until focus  
21 group research had been conducted?  
22 A. I don't know that. I know that you did do --  
23 that Philip Morris did do a focus group discussion or  
24 Roper did a focus group or an interview with -- with  
25 people as young as 14 and -- and under, and that the  
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1 recommendation was to continue to market to youth,  
2 and so that was a kind of survey done by Philip  
3 Morris. You know, for the most part I -- I would say  
4 that you would do focus groups prior to a marketing  
5 campaign, but I don't remember having viewed one  
6 right at this time. But I looked at hundreds of  
7 documents.  
8 Q. Now I'm a little bit mixed up. Let me ask this  
9 question. You just referred to Roper.  
10 A. Yes.  
11 Q. Right? That's a survey. That was a survey;  
12 wasn't it?  
13 A. It was an interview with 1050 people under the  
14 age of 22, and I believe under -- almost a thousand  
15 were under age 18.  
16 Q. And that was a survey; wasn't it?  
17 A. It was --  
18 Q. Where --  
19 A. -- an interview to see how Kool was doing. They  
20 were worried whether -- Philip Morris was worried  
21 whether Kool was going to start capturing the youth  
22 market, and so they were trying to get information  
23 from young people, under-age people about Kool and  
24 how Kool was perceived and how Marlboro was  
25 perceived.

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1 Q. You know the difference between interviews and  
2 surveys on the one hand and focus groups on the  
3 other; don't you, professor?  
4 A. Yes. I think they're -- they're different forms  
5 of getting information.  
6 Q. And you know that cigarette marketing campaigns  
7 were not taken to market until after they were focus  
8 grouped with the people that the companies wanted to  
9 serve as the focus for the marketing; right?  
10 A. No, I don't think I'd agree with that.  
11 Q. And in focus groups, what the marketers do is  
12 they show advertising, product attributes, packaging,  
13 et cetera, to groups of smokers; correct?  
14 A. Well I also saw focus groups with -- with young  
15 people that weren't smokers that we didn't discuss in  
16 this because they were from -- from RJR McDonnell.  
17 Q. RJR McDonnell?  
18 A. I think.  
19 Q. You didn't talk about that yesterday; did you?  
20 A. No, no, because it's from another -- from  
21 Canada.



22 Q. Okay.  
23 A. So I think some focus groups --  
24 Well for the most part, the focus groups, the  
25 research that I saw, was done with smokers.  
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1 Q. Indeed, you haven't seen any focus groups from  
2 any of these defendants that were done with anything  
3 other than smokers and smokers who were 18 and over;  
4 have you?

5 MS. WALBURN: I'm going to object to that  
6 question as beyond the scope of discovery since  
7 third-party advertising agency documents were not  
8 produced by defendants.

9 THE COURT: Sustained.

10 Q. You did see a number of focus group documents;  
11 correct? I think you said that just a few moments  
12 ago.

13 A. I did see some focus group documents.

14 Q. And you saw no focus groups that included people  
15 under the age of 18; did you, professor?

16 MS. WALBURN: Same objection, beyond the  
17 scope of discovery.

18 THE COURT: Sustained.

19 Q. This Philip Morris document doesn't include any  
20 information whatsoever with respect to attitudes,  
21 product likes, product dislikes; does it?

22 A. This document shows the -- you know, how many  
23 boys and girls smoked, how many they smoked per day,  
24 what ages they were smoking, what -- where they  
25 lived, whether it was metro or in large urban areas,

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1 what their occupation was, and, you know, whether  
2 they were white or non-white, so this was demographic  
3 information that might be useful in marketing, or at  
4 least knowing about a target group.

5 Q. My question was, professor: This Philip Morris  
6 document doesn't include any information whatsoever  
7 with respect to attitudes, product likes, product  
8 dislikes; does it?

9 A. This particular document just has data on -- on  
10 how many -- on how much adolescents smoke, what their  
11 average consumption is.

12 Q. So the answer is it doesn't have anything about  
13 attitudes, product likes or dislikes; right?

14 A. This document doesn't, but other documents do.

15 Q. And that's the kind of information, attitudes,  
16 product likes, product dislikes, that's the kind of  
17 information you find in focus group research;  
18 correct?

19 A. Or you find it in survey research, which you did  
20 with -- which the tobacco companies did with people  
21 under age. You can find out a lot about attitudes by  
22 interviewing 1050 people.

23 Q. Did you see any survey results or interview  
24 results that tested product ideas and product  
25 attributes with people under age?

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1 MS. WALBURN: Same objection, beyond the  
2 scope of discovery.

3 THE COURT: Sustained.

4 Q. With respect to what you did review -- and you  
5 said you reviewed a number of surveys; right?

6 A. Yes, I did.

7 Q. With respect to what you did review, did you see  
8 any survey results or interview results that tested  
9 product ideas and product attributes with people  
10 under age?

11 MS. WALBURN: Same objection.

12 THE COURT: Sustained. You'll have to  
13 rephrase that, counsel. I mean you can ask the  
14 question if you rephrase it.

15 Q. Did the survey results or interview results that  
16 you did review contain information about product  
17 ideas and product attributes discussed with people  
18 under 18?

19 A. I believe there was -- I believe the answer is  
20 yes, but since I reviewed so many documents, I would  
21 need to look back. I remember one Lorillard document  
22 with newly started people, newly started smokers,  
23 they didn't have a lower age limit. They were  
24 talking about products. Also, really a lot of the  
25 documents talked about brands, what brands were they

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1 smoking, and that seemed to be important for market  
2 decisions as -- as well. It wasn't just how many are  
3 smoking, but what brands and subbrands, lines of  
4 brands they were smoking.

5 Q. But my -- my question is: With respect to the  
6 documents you did review, did any of those surveys or  
7 interviews test product ideas, product attributes,  
8 not just brand names, but test product ideas and  
9 product attributes, test product advertising with  
10 people under 18?

11 A. Well I can't remember. But I do remember that a  
12 number looked at people who were 18 to 20 or 18 to  
13 24, and if you're looking at someone 18, you're going  
14 to find out a lot about how high school students are  
15 thinking, and since the advertising is supposed to be  
16 aimed at 21 and over, if you have 18-year-olds,  
17 18-year-olds are in high school with 17-, 16-,  
18 15-year-olds, so doing focus groups with 18-year-olds  
19 is a pretty good way of finding out what's going on  
20 with high school students.

21 Q. And you said yesterday, I believe, that 18  
22 wasn't a magical date. Do you remember saying that?

23 A. Yes. I said that the day of your 18th birthday,  
24 you're most likely in high school.

25 Q. And --

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1 But you did say it wasn't a magical date; right?  
2 Remember that? I think that was your language.

3 A. I think so.  
4 Q. While it may not be magical, you would agree our  
5 society treats people who become 18 different from  
6 those who aren't 18, who are under 18; correct?  
7 A. Well in some instances, but I think in this  
8 instance we're talking about a dangerous product,  
9 cigarettes, so we want to be particularly prudent.  
10 In fact, I believe Mr. Schindler said the other day  
11 in his testimony that there should be a buffer, that  
12 there should be a buffer time, 18 to 21, where you  
13 don't do any advertising or -- or promotions. He --  
14 he really believed that. And that that 18-year-old  
15 is a lot like a high-school student.  
16 Q. Were you here for Mr. Schindler's testimony?  
17 A. Yes, I was, for part of it.  
18 Q. My question was that society does treat people  
19 differently, doesn't it, as of the day they turn 18?  
20 Aren't there a number of legal consequences to  
21 turning 18?  
22 MS. WALBURN: Objection, asked and  
23 answered.  
24 THE COURT: Well, it's a little different  
25 question.

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1 A. There's a lot of different cutoff points in  
2 our -- in our society. At 18, yes, you can join the  
3 Army, which you tend to do after you leave high  
4 school. You don't -- you know, your birthday isn't  
5 in March and you turn 18, then you quit school and go  
6 into the Army. You wait until you're done with high  
7 school and then you go into the Army. We don't vote  
8 until we're age 21. We don't drink until we're age  
9 21. So we have different ages for different things  
10 in our society. And it seems to me that age 21 was  
11 the age selected by the tobacco industry as being the  
12 age of maturity. That is the age that the tobacco  
13 industry decided on in 1964 and kept reiterating,  
14 kept saying over and over again, age 21 is the age of  
15 maturity, not age 18.  
16 Q. Now you can join the Army when you're 18; right?  
17 A. Well I can't, but people can join the Army when  
18 they're age 18.  
19 Q. And you can vote when you're 18; can't you?  
20 A. I'm not sure. I thought you had to be 21 to  
21 vote.  
22 Q. Well you've studied adolescents these number of  
23 years. Do you know whether adolescents who are 18  
24 are given the right to vote?  
25 A. It's -- it's escaping me right now.

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1 Q. Do you know whether they have the right to vote  
2 for president, representatives and senators?  
3 A. No, I believe that's age 21.  
4 Q. You know society says when you reach 18 you're  
5 fully competent to leave home and no more parental  
6 authority; correct?  
7 A. As I said, there are different ages for

8 different stages. You know, we don't allow drinking  
9 until age 21, for example. I mean there are  
10 different ages. And in the tobacco industry  
11 documents, it's your -- it was your, the tobacco  
12 industry, that said age 21 is the age of maturity.  
13 Age 21 and over is who you should be advertising to.  
14 Age 21 and over is who you should send your  
15 promotions to.

16 Q. My question was, professor: You know that  
17 society says when you're 18 you're fully competent to  
18 leave home and be done with parental authority; isn't  
19 that right?

20 A. Well I don't really know that language.

21 Q. And society, including Minnesota society, says  
22 that when you're 18, you can walk into a store and  
23 legally buy a pack of cigarettes; right?

24 A. At 18, yes, you can legally buy a pack of  
25 cigarettes.

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1 Q. Have you suggested to the Minnesota legislature  
2 that they ought to raise the age at which cigarettes  
3 can be purchased?

4 A. I haven't personally done that, no. However, in  
5 the Surgeon General's report we suggested that the  
6 age should be raised at least to age 19 so that  
7 people were out of high school. Because if you are  
8 18, you mostly turn 18 when you're in high school, so  
9 that means your friends are in high school. So that  
10 was one of our -- our recommendations or -- in the  
11 Surgeon General's report.

12 Q. Did you know that up until 1963, the law in  
13 Minnesota provided you had to be 21 to buy  
14 cigarettes?

15 A. No, I didn't know that. I thought it was 18  
16 back to like 1897. So that's --

17 Q. And did -- I'm sorry.

18 Did you know that they reduced the age because  
19 they found that not enforcing that led to widespread  
20 disregard for the law?

21 MS. WALBURN: Objection to the form of the  
22 question.

23 THE COURT: Sustained.

24 Q. Now the 1994 Surgeon General's report cited a  
25 number of studies, didn't it, that suggested stronger

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1 enforcement of state laws forbidding sales to minors?

2 A. Can you refer me to a particular page?

3 Q. Why don't we start with page 248. Up in that  
4 upper right-hand column, professor, could you start  
5 with that first full sentence in the right-hand  
6 column that begins with the word "Adding," and could  
7 you read the rest of that paragraph.

8 A. "Adding legal sanctions to the purchase of  
9 tobacco will deter those young people who are  
10 unwilling to break laws to obtain tobacco and will  
11 add to the perceived social unacceptability of  
12 tobacco use. Two cross-sectional studies provide

13 preliminary evidence that suggests a negative  
14 relationship between tobacco access and tobacco use  
15 among young people. Controlling the sale of tobacco  
16 to minors emphasizes the dangerous nature of tobacco  
17 products and places tobacco appropriately in the  
18 category of regulated products. These measures also  
19 reinforce and support the messages about tobacco that  
20 young people receive in school and other settings."  
21 Q. Now could you turn to tab seven of your binder,  
22 professor, which is AM000281. Do you have it?  
23 A. Yes, I do.  
24 Q. Is AM000281 an article by some -- several  
25 colleagues of yours?

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1 A. Yes, it is.  
2 Q. At the University of Minnesota?  
3 A. Yes, it is.  
4 Q. And they're reliable researchers; are they not?  
5 A. Of course.  
6 Q. And this is the kind of article that you take  
7 into account when you think about your prevention  
8 policies that you're working on; correct?  
9 A. This was a very -- maybe one of the first  
10 articles on sources of cigarettes. One of the  
11 reasons that it -- it was so important was it was  
12 really a very early article in -- on this subject  
13 area.  
14 Q. And you've read this before.  
15 A. I have read it before. I haven't studied it  
16 recently, but I -- you know, I saw that it was in the  
17 documents.

18 MR. WEBER: Your Honor, I'd move the  
19 admission of AM000281 as a learned treatise.

20 MS. WALBURN: No objection.

21 THE COURT: Court will receive AM000281.

22 BY MR. WEBER:

23 Q. Now what this reports upon, does it not,  
24 professor, is, among other things, there was a phone  
25 survey to various police departments in the state of

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1 Minnesota asking questions about how youth got  
2 cigarettes? Do you remember that?  
3 A. No, I don't remember that. I thought this was a  
4 survey of 10th graders.  
5 Q. Could you go to the --  
6 Well there -- there are several different, I  
7 think we'll see when we go through, several different  
8 research issues in here. But could you go to the  
9 page labeled 48.  
10 A. Forty-eight?  
11 Q. And in the right-hand column, could you read the  
12 last full paragraph that begins "Though...?"  
13 A. "Though a restrictive law has been in effect in  
14 Minnesota since 1961, and most of these teen-agers  
15 knew the law, few reported having been challenged in  
16 attempts to purchase cigarettes. Systematic records  
17 are not kept in Minnesota regarding prosecution for

18 sale of cigarettes to minors, but an informal phone  
19 survey of police officials in several Minnesota  
20 municipalities revealed that no one could remember an  
21 instance where the law was enforced."

22 Q. Now part of the norm, the societal community  
23 norm about acceptability of youth using tobacco is  
24 set by whether or not laws are enforced; correct?

25 A. Well in this case, in this study, which was done  
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1 in 1989 -- and it was probably the first study that  
2 looked at teen-age access to tobacco -- they did --  
3 they alerted the public that in fact teen-agers do  
4 have access to tobacco. This, then, started  
5 community action to make access to tobacco more  
6 restricted. It began with a program in White Bear  
7 Lake, the first city in the whole country to ban  
8 cigarette vending machines; it went on to Ramsey  
9 County where there's very -- very good access laws;  
10 it then went to the state level where for three  
11 consecutive years there was legislation in front of  
12 legislators to enact legislation that would prevent  
13 teens from having access to tobacco, and in -- and in  
14 each of those years it was heavily lobbied against by  
15 the tobacco industry; and finally last year the best  
16 teen-age access prevention bill went into place, the  
17 best in the country. So this article was a very  
18 important article in getting that going.

19 And I think this issue about enforcement, part  
20 of the problem at this point was that if you -- if --  
21 that the bill read that if someone sold someone a  
22 cigarette -- a pack of cigarettes, then they could be  
23 prosecuted, and I believe that was in criminal court.  
24 Now nearly half of the people that sell cigarettes in  
25 these convenience stores are themselves under 18, so

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1 the police don't want to put an under-18-year-old  
2 into jail for selling cigarettes. That's why the  
3 access bill was so important, because it took it out  
4 of the criminal court and put it into -- into the  
5 place where the people who actually owned the  
6 convenience stores get fined, so there's a money  
7 attachment to it. So there -- the lack of  
8 enforcement -- and some of these had to do with who  
9 was selling the cigarettes, and the fact that police  
10 didn't really want to be throwing under-age kids  
11 in -- in jail for that.

12 Q. Okay. Can we go back to my question, ma'am?  
13 Now part of the norm, the societal community norm  
14 about the acceptability of youth using tobacco is set  
15 by whether or not laws are enforced; correct?

16 A. Well the norms, that can contribute to norms,  
17 and that certainly, you know, could be -- could be  
18 happening. I really don't know the relationship  
19 between access and norms. Obviously, if teens have  
20 less access, commercial access to cigarettes, that  
21 puts a barrier between teen-agers and cigarettes.

22 Q. Does it send an inconsistent message to youth if

23 laws exist that say they can't buy cigarettes, but  
24 the laws are not enforced at all? Does that send an  
25 inconsistent message about what the community norm  
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1 is?  
2 A. It might send an inconsistent message. And --  
3 but that's been true for many years. I mean -- and  
4 really I don't think people knew about it. This --  
5 as I said, this article made it was -- it was issued  
6 in 1989, people really didn't know that youth had  
7 easy access to cigarettes. It -- it really wasn't  
8 part of the -- the issue at that point.  
9 Q. In 1989?  
10 A. No, up to 1989 people didn't really realize that  
11 young people had such easy access, or at least in  
12 the -- in the research community.  
13 Q. So let me see if I understand this. Up until  
14 1989 the research community didn't realize that youth  
15 had easy access to cigarettes?  
16 A. Well --  
17 MS. WALBURN: Objection, asked and  
18 answered.  
19 THE COURT: You may answer.  
20 A. They didn't know to this -- to this extent.  
21 This is one of the first studies that really looked  
22 at it systematically.  
23 Q. Well it wasn't just in 1988 or 1989 that people  
24 thought under-age smoking was a problem; was it?  
25 A. No, of course not.

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1 Q. We saw some studies going back into at least the  
2 early '70s today; right?  
3 A. Yes, we did.  
4 Q. And where did the research community think all  
5 these under-age people that they were worried about  
6 and analyzing and writing about, where did they think  
7 they were getting their cigarettes?  
8 A. Well you know, during the early '80s there was a  
9 much bigger focus on peers, and so that was really  
10 the focus of -- of the research. And -- and then,  
11 you know, as I said, this became a very important  
12 issue because it came to light. You know, it's a way  
13 of how is the -- how is the problem viewed? And --  
14 and as I said yesterday, people viewed the problem  
15 of -- of teen-agers of, well, do they know the health  
16 consequences? And then they said, okay, now we need  
17 to look at social influences. And this began the  
18 process of also looking at teen-age access.  
19 Q. Well again my question is: The research  
20 community thought there was a problem about too many  
21 under-age kids smoking and thought that for at least  
22 a couple decades before '88 or '89; right?  
23 A. The research community was pretty focused, as I  
24 mentioned earlier today, on the demand side of the  
25 equation; that is, peers, advertising; not so much on

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1 the supply side of the equation, convenience stores  
2 and how the tobacco industry makes convenience stores  
3 more attractive to young people. So the research  
4 community focused primarily on the demand side.

5 Q. Well let me ask again the question I asked  
6 earlier but I'm not sure I got an answer. Where did  
7 the public health community or the research community  
8 think under-age youth were getting their cigarettes?

9 MS. WALBURN: Objection, asked and  
10 answered.

11 THE COURT: It's been asked and answered.

12 Q. You had said that the focus was on peers; right,  
13 back in that period?

14 A. The focus of the prevention programs were on  
15 social -- the social influences and -- and  
16 particularly looking at the importance of peers.

17 Q. Was it -- was it assumed by those involved in  
18 this research that under-age youth were getting their  
19 cigarettes from peers?

20 MS. WALBURN: Object to the form of the  
21 question.

22 THE COURT: No, you may answer.

23 A. I'm not sure we assumed anything about that. We  
24 were focusing in on reducing demand at that point,  
25 and that is sort of the -- the basis. If -- if a

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1 young person doesn't want to smoke, you know, that --  
2 you know, that's reducing demand.

3 Q. If a young person doesn't want to smoke, they're  
4 not going to smoke; right? Isn't that --

5 A. Well that's a misstatement. That's a  
6 misstatement.

7 Q. Think there are a lot of young people out there  
8 who start smoking because they don't want to start  
9 smoking?

10 A. I think people --

11 There are a lot of young people who start  
12 smoking without knowing the consequences of their  
13 behavior.

14 Q. But when they start smoking, it's not that they  
15 don't want to start smoking. They're saying I do  
16 want to start smoking; right?

17 A. They don't say that. It's generally in the  
18 context of -- of a friend or friends, and they  
19 perceive that it's going to be functional for them at  
20 that point.

21 Q. And as you said, when they do start smoking,  
22 it's generally in the context of a friend or friends;  
23 right?

24 A. Generally it is.

25 Q. Now you know that Attorney General Humphrey has

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1 stated that enforcement of the laws against retail  
2 sales to youth is the best way to stop youth smoking?

3 MS. WALBURN: Object to the form of the



4 question.  
5 THE COURT: Sustained.  
6 Q. Would you turn to tab nine in your packet, which  
7 is BYS000469. Do you have tab nine, professor?  
8 A. Yes, I do.  
9 Q. (Coughing.) Excuse me.  
10 And is that a press release from the office of  
11 Hubert H. Humphrey III, Office of the Attorney  
12 General, dated December 30, 1994?  
13 A. Yes, it is.  
14 MR. WEBER: Your Honor, I'd move the  
15 admission of this document as a self-authenticating  
16 public record, and under 801(d)(2) as an admission.  
17 MS. WALBURN: No objection to the document,  
18 but it falls outside the scope of this witness's  
19 direct testimony. She didn't testify about law  
20 enforcement.  
21 THE COURT: Okay. BYS000469 will be  
22 received.  
23 BY MR. WEBER:  
24 Q. Now this is a press release from Attorney  
25 General Humphrey; correct?  
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1 A. Yes, it is.  
2 Q. And this is dated December 30, 1994, professor?  
3 A. Yes, it is.  
4 Q. And that's after the filing of this lawsuit?  
5 A. Yes, it is.  
6 Q. And professor -- "professor."  
7 Attorney General Humphrey is no friend of  
8 tobacco; is he?  
9 A. I can't -- I won't answer that.  
10 Q. He certainly doesn't make up excuses for the  
11 tobacco companies; does he?  
12 MS. WALBURN: Object to the form of the  
13 question.  
14 THE COURT: Argumentative.  
15 Q. Could you read the second sentence -- the second  
16 paragraph.  
17 A. I'll read the second paragraph if I can read  
18 another paragraph in this press release.  
19 Q. I'm sure your lawyer will give you a chance to  
20 do that. Right now I want to ask you to read the  
21 second paragraph, professor.  
22 A. All right. "'Our message is simple: Either we  
23 get serious about tobacco sales to minors or we will  
24 lose another generation of kids to tobacco-related  
25 deaths,' Humphrey said. 'most tobacco use begins at  
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1 a young age, so cracking down on illegal sales to  
2 minors is our best hope to break the cycle of  
3 addiction.'"   
4 Q. Then if you go down to the second-to-the-last  
5 paragraph, "Studies...."  
6 A. Oh, on that same page.  
7 "'Studies show that underage decoy shoppers in  
8 Minnesota are still able to buy cigarettes illegally

9 more than 63 percent of the time. Unless we get  
10 better private and public oversight of the laws  
11 governing tobacco sales to kids, we'll all be paying  
12 the enormous costs of tobacco-related illness for  
13 years to come."

14 Q. Do you agree that cracking down on illegal sales  
15 to minors is the best way to stop sales to youth?

16 A. No, I don't. And I'd like to say that I don't  
17 think Mr. Humphrey did either. He said in this same  
18 document "'Because of slick advertising aimed at  
19 young people, as many kids recognize Joe Camel as  
20 Mickey Mouse,' Humphrey said. 'But Joe Camel isn't  
21 the only reason so many kids are getting addicted to  
22 tobacco.'

23 "Humphrey said he will be supporting legislation  
24 in the upcoming Minnesota legislative session to  
25 require a licensing system for tobacco sales in those

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1 communities that do not now have one and to see that  
2 licensing is backed up by regular compliance checks  
3 and by effective sanctions for repeat violators. He  
4 will work with legislators on the details of the  
5 proposal in coming weeks."

6 Q. You didn't read that quite right; did you,  
7 professor?

8 A. I did read what I wanted to.

9 Q. Right? You read what you wanted to.

10 THE COURT: Counsel, counsel, do you have a  
11 question?

12 MR. WEBER: Yes. Yes, I do, Your Honor.

13 THE COURT: Ask a question, please.

14 MR. WEBER: Okay.

15 Q. When you just read those two paragraphs,  
16 starting with "'Because'" there, --

17 A. Yes.

18 Q. -- you skipped over a sentence; didn't you?

19 A. Because it wasn't part of my point. You made  
20 that point already, so I didn't think I needed to  
21 make that point again. I wanted to make the point,  
22 number one, that it wasn't the only thing that Mr.  
23 Humphrey was concerned with, he was also concerned  
24 with advertising, and two, that he -- this was  
25 part -- this press release was part of a legislative

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1 process which the tobacco industry lobbied heavily  
2 against, and I wanted some of the context of that  
3 legislation to be read. I didn't need to read your  
4 point.

5 Q. Well I'm just asking questions, professor. My  
6 question now is --

7 THE COURT: Counsel, please, no commentary.  
8 Just ask your question.

9 Q. When you read that, you just skipped that one  
10 sentence; correct?

11 MS. WALBURN: Objection, asked and  
12 answered.

13 THE COURT: It's been asked and answered.

14 Q. Would you read it now, professor.  
15 MS. WALBURN: Objection, the statement has  
16 been read into the record.  
17 THE COURT: You may read the whole thing.  
18 A. "'Because of slick advertising aimed at young  
19 people, as many kids recognize Joe Camel as Mickey  
20 Mouse,' Humphrey said. 'But Joe Camel isn't the only  
21 reason so many kids are getting addicted to tobacco.  
22 Lax government and business oversight of tobacco  
23 retailing laws is also to blame, and that's something  
24 we can change.'".  
25 "Humphrey said he will be supporting legislation  
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1 in the upcoming Minnesota legislative session to  
2 require a licensing system for tobacco sales in those  
3 communities that do not now have one, and to see that  
4 licensing is backed up by regular compliance checks  
5 and by effective sanctions for repeat violators. He  
6 will work with legislators on the details of the  
7 proposal in coming weeks."  
8 Q. Now professor, let me, just to make sure I  
9 understand, in this second paragraph, did you say  
10 that you did not believe that Attorney General  
11 Humphrey thought that cracking down on illegal sales  
12 to minors was the best hope to stop sales to youth?  
13 A. I thought you were asking me whether I thought  
14 that cracking down was the best hope. That is what I  
15 answered, and I said no, I didn't think that cracking  
16 down was the best hope to break the cycle of  
17 addiction.  
18 Q. Was that --  
19 A. And I don't think -- unless I heard you wrong, I  
20 didn't think you were referring to Attorney General  
21 Humphrey.  
22 Q. Well no, my question was -- was directed to you.  
23 It was do you agree that cracking down on illegal  
24 sales to minors was the best way to stop sales to  
25 youth, and your answer was "No, I don't. And I'd  
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1 like to say that I don't think Mr. Humphrey did  
2 either," and then you went on. So that's -- that's  
3 why I'm following this up.  
4 A. Oh. Oh.  
5 Q. Did you mean to say that Attorney General  
6 Humphrey does not think that cracking down on illegal  
7 sales to minors is the best hope to stop youth  
8 smoking?  
9 A. You know, I don't actually know what Mr.  
10 Humphrey thinks what -- in terms of the relative  
11 importance of access and advertising. I know, you  
12 know, this is a press release, and it was prior to  
13 trying to get legislation, it's a part of the  
14 political process and he was making a big point, and  
15 so I don't actually know what he thinks in terms of  
16 the relative importance of access and advertising.  
17 I -- I know he thinks both of those are important  
18 influences on -- or I believe that both of those

19 are -- that he thinks they're -- they're both  
20 important influences on youth smoking.  
21 Q. But what he said was that cracking down on  
22 illegal sales was the best hope; right?  
23 A. Yes. He also said "But Joe Camel isn't the only  
24 reason so many kids are getting addicted to tobacco."  
25 So that's where I believe that Mr. Humphrey sees that

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1 both of these are important in terms of youth  
2 smoking.

3 Q. Now --

4 THE COURT: Counsel --

5 Q. -- messages about --

6 THE COURT: Counsel, I think we'll recess  
7 at this time.

8 MR. WEBER: Okay.

9 THE COURT: Reconvene tomorrow at 9:30.

10 THE CLERK: Court stands in recess, to  
11 reconvene tomorrow morning at 9:30.

12 (Jury leaves the courtroom.)

13 (The following conversation was held in the  
14 courtroom with the jury and the judge  
15 not present:)

16 THE CLERK: I just wanted to get some  
17 guidance with respect to objections for document day.  
18 If you can file them with the court or let the court  
19 know on Thursday what your objections are going to  
20 be, a listing of objections. Procedurally we will  
21 have the hearing in the courtroom too, but just to  
22 get an idea of timing when the jury is going to have  
23 access to documents, the court would like some ideas  
24 as far as objections. Will you be filing, or does it  
25 provide for that --

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1 MR. BERNICK: In other words, you'd like a  
2 listing of objections?

3 THE CLERK: Yeah, just documents, of which  
4 documents.

5 MR. MONICA: By when?

6 THE CLERK: Thursday.

7 MR. CIRESI: What Mr. Bernick said  
8 yesterday was those for which there are not any  
9 objections to, we could provide those to the jury  
10 right away.

11 THE CLERK: Okay.

12 MR. CIRESI: And we could, obviously  
13 outside the presence of the jury, go over those  
14 documents on which there is an objection, and then we  
15 can see whatever of those get in. So I assume when  
16 we get their objections, we will be able to segregate  
17 out those documents separately.

18 The other thing is on the witness list, I would  
19 like to raise an issue. The defense is to provide us  
20 with their witness list and those individuals whom  
21 they will call live and those who they will call by  
22 deposition. They have not done that. I would like  
23 to receive that this evening.

24 MR. BLEAKLEY: We're doing that.  
25 MR. CIRESI: We would like to receive it  
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1 this evening.  
2 MR. BLEAKLEY: We're doing that.  
3 MR. CIRESI: Are we going to get it this  
4 evening?  
5 MR. BLEAKLEY: We hope so.  
6 MR. CIRESI: If we're not going to do ,  
7 I'll bring it up with the court.  
8 MR. BLEAKLEY: I know we're in the process  
9 of trying to do that. I can't attest at this instant  
10 that it will happen, but I hope so.  
11 MR. CIRESI: If we don't have it by the  
12 time court starts, then we'll bring it up with the  
13 court.  
14 MR. WEBER: Correct me if I am wrong, Mr.  
15 Ciresi, don't we also -- isn't there still a motion,  
16 a document-day motion pending that hasn't been ruled  
17 on?  
18 MR. CIRESI: I have no idea what document-  
19 day motion is pending.  
20 MR. BERNICK: Yes, I think there is.  
21 MR. CIRESI: And hasn't been ruled on?  
22 THE CLERK: There is a notice for having  
23 the document day which is to be held on Friday.  
24 MR. WEBER: But I just wanted to say they  
25 were objecting to certain documents, a motion was  
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1 filed that was a broader objection to the  
2 designations that have been done here.  
3 THE CLERK: And of course those objections  
4 would be heard with the other objections, if that's  
5 what you'd like to do.  
6 MR. BERNICK: I think that that's right.  
7 And that was not listed in the notice, but we can  
8 argue that as well on Friday.  
9 THE CLERK: If that's what you'd like to  
10 do.  
11 MR. BERNICK: Well that really probably  
12 should be argued before the review begins.  
13 MR. WEBER: Right. That's why I was  
14 raising that point.  
15 MR. CIRESI: Which motion are you talking  
16 about? Because you raised an issue, we had a  
17 document day, and then you keep raising the issue  
18 again. And if the court's already ruled on it, then  
19 I believe there has been a decision. So which  
20 specific issue are you talking about?  
21 MR. WEBER: Well I --  
22 MR. CIRESI: Just a minute, Mr. Weber, you  
23 weren't at the last document day, Mr. Bernick was.  
24 Are you addressing some of the issues you raised  
25 during document day, Mr. Bernick, or is there  
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1 something different?

2 MR. BERNICK: There's a different motion  
3 which was filed in connection with the second  
4 document day. Mr. Weber is correct to remind us of  
5 that because the motion has not been ruled on.

6 THE CLERK: Okay. With respect to the  
7 second document day, defense counsel is aware that it  
8 will be held, so if there are other objections that  
9 you are seeking the court's ruling on, it's your  
10 province to bring it up.

11 MR. BERNICK: The motion was filed. It's  
12 not been ruled on.

13 THE CLERK: I understand.

14 MR. BERNICK: And that's all we're raising.

15 THE CLERK: Counsel, you're aware of the  
16 court's --

17 MR. BERNICK: We recognize that Friday is  
18 going to be the document day. We recognize that if  
19 we have documents with specific objections, that  
20 they'll be heard first thing at that time. I think  
21 all Bob is pointing out is there still is this  
22 pending motion.

23 MS. WALBURN: My recollection on the  
24 motion, although it may be a little hazy, but my  
25 recollection of the document-day motion that's

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1 pending is that it is in large part duplicative of  
2 issues that were raised with respect to document day  
3 one.

4 MR. WEBER: I don't believe that's the  
5 case. The document day two motion is largely  
6 directed to abuse of designations by plaintiffs  
7 designating an amount of documents that nobody could  
8 conceivably go through and review in time. It's an  
9 abuse of the document day process. We think what  
10 they're trying to do is dump documents into the  
11 record.

12 MR. CIRESI: No, let me address that.

13 MR. BERNICK: Whatever it is is.

14 MR. CIRESI: Yeah. If it is, the only  
15 documents that I'm aware of that have been dumped  
16 into the record were by Mr. Weber in the direct  
17 examination of Dr. Glenn where he put in the CTR  
18 annual reports of which there were, I don't know how  
19 many, but he asked a question on maybe one or two  
20 pages.

21 I might point out that that was after there had  
22 been overdesignation of documents by the defense and  
23 the court had brought that to the parties' attention.  
24 And so the next day when he designated all those  
25 documents, they dumped them all in and used one or

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1 two pages, I believe, of one report.

2 So we are not dumping any documents in. We have  
3 a number of defendants and over 40 years, and we need  
4 to cover all of those issues during those decades by

5 each one of the defendants. And that's what we're  
6 trying to do with regard to these documents.

7 MR. BERNICK: You know, the motion is  
8 whatever it is. I do recall that when this issue  
9 first was raised, even in conjunction with the first  
10 document day, the argument was made about the scope  
11 of even the first document day, and I believe the  
12 comments from the bench were not unsympathetic to the  
13 notion this created an issue. We now have the second  
14 document day, there's a second motion that's now  
15 pending. All we're trying to do is to alert the  
16 court to the fact that it's still pending and  
17 presumably we have to get it resolved before the  
18 document day commences. But these are all pending  
19 before the court.

20 MR. CIRESI: They are indeed. And let me  
21 point out that what Ms. Walburn just said is correct,  
22 that was the issue that was raised. It was the issue  
23 you raised on the first document day, and the court,  
24 according to my recollection, said that he would  
25 continue, as he had in the past, to deal with all of

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1 the documents on an individual basis, and he would  
2 make a determination if any party was abusing the  
3 right to put documents into evidence. So we now know  
4 that it was duplicative of what was raised on the  
5 first document day, and we'll deal with it on Friday,  
6 I assume at the court's leisure.

7 THE CLERK: Thank you.  
8 (Conversation concluded.)  
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